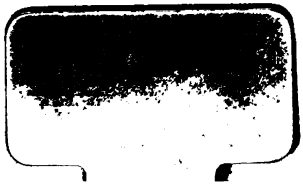

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1791.

THE

LAWS

RELATING TO

Landlords and Tenants;

OR,

Every LANDLORD and TENANT

HIS OWN

LAWYER;

CONTAINING

The whole Law reſpecting LANDLORDS, TENANTS, and LODGERS, laid down in a Plain, Eaſy, and Comprehenſive Manner;

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Author of the CONSTABLE, CHURCHWARDEN, OVERSEER, SURVEYOR, and HIGHWAY GUIDE, and other Law Tracts.

REVISED AND CORRECTED

By GEORGE WILSON, Serjeant at Law.

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CONTENTS.

CHAP.

I. *INTRODUCTION.*

II. *The DIFFERENT KINDS of ESTATE.*

1. *Fee Simple.*
2. *Fee Qualified.*
3. *Fee Conditional.*
4. *An Eſtate in Tail.*
5. *An Eſtate after Poſſibility, &c.*
6. *An Eſtate by Curteſey.*
7. *An Eſtate in Dower.*
8. *A Jointure.*
9. *An Eſtate for Life.*
10. *An Eſtate for Years.*
11. *A Tenancy at Will.*
12. *A Tenancy at Sufferance.*
13. *Copyholds.*
14. *An Eſtate in Coparcenary.*
15. *Eſtates in Gavelkind, &c.*
16. *Of Jointenants.*
17. *Tenants in Common.*
18. *An Eſtate in Mortgage.*
19. *An Eſtate by Elegit.*
20. *An Eſtate by Statute Merchant.*
21. *An Eſtate by Statute Staple.*
22. *Eſtates in* ANCIENT DEMESNE.
23. *An Eſtate in Remainder.*
24. *An Eſtate in Reverſion.*

III. *The LAW of DESCENTS.*

1. *Definition of Deſcent.*
2. *Of Conſanguinity.*
3. *The Seven Canons of Inheritance.*
4. *Deſcents by Cuſtom.*
5. *Deſcents by Statute.*

CHAP.

IV. *The LAW of DEEDS and LEASES.*

1. *Definition of* PURCHASE.
2. *Definition of Leaſes.*
3. *Who may be Leſſors.*
4. *Of the Words of Leaſes.*
5. *Of Covenants.*
6. *Of Powers.*
7. *Of Aſſignments.*
8. *Precedents.*

V. *The LAW of ESTOVERS.*

1. *Definition of Eſtovers.*
2. *The ſeveral Kinds.*
3. *Who are intitled to Eſtovers.*

VI. *The LAW of RENTS.*

1. *To and by whom Rent is payable.*
2. *At what Place.*
3. *Of* THE TIME *of Payment.*
4. *Of* THE DEMAND *of Rent.*
5. *The Tender and Acceptance of Rent.*
6. *Of the Conſequences of Non-Payment.*
7. *Of Notice to Quit.*
8. *Of double Rent.*
9. *Precedents.*

VII. *The LAW of DISTRESS for RENT.*

1. *Who may or may not Diſtrain.*
2. *Of what Things a Diſtreſs may be taken.*
3. *At what Time the Diſtreſs ſhall be taken.*
4. *Where the Diſtreſs ſhall be made.*
5. *How a Diſtreſs ſhall be diſpoſed of by the Common Law.*
6. *How the Goods Diſtrained ſhall be diſpoſed of by Statute.*

7. *Of*

CONTENTS.

CHAP.

7. *Of an irregular and exceſſive Diſtreſs.*
8. *Of Reſcuing a Diſtreſs.*
9. *Of the Landlord's Remedy, where there is not ſufficient to Diſtrain.*
10. *Precedents.*

VIII. *The LAW of REPLEVIN.*

1. *For and againſt whom Replevin lies.*
2. *For what Things Replevin lies.*
3. *The different Kinds of Replevin.*
4. *Out of what Courts Replevin iſſues.*
5. *Of the Pledges in Replevin.*
6. *Of the Writs and Proceſs in Replevin.*
7. *Of the Declaration and Pleas in Replevin.*
8. *Of the Writ of Enquiry.*
9. *Of Coſts in Replevin.*
10. *Precedents in Replevin.*
11. *Bills of Coſts in Replevin.*

IX. *The LAW of EJECTMENT.*

1. *The Methods of Proceeding.*
2. *For whom and in what Caſes it lies.*
3. *For what Things it lies.*
4. *Ejectment for Non-Payment of Rent.*
5. *The Declaration; Leaſe, Entry, and Ouſter.*
6. *Service of Declaration.*
7. *Defence and Plea.*
8. *Evidence and Verdict.*
9. *Judgment and Coſts.*
10. *Writ of Error and Execution.*
11. *Action for Meſne Profits.*
12. *Of bringing a Second Ejectment.*
13. *Practice and Precedents in Ejectment.*

X. *A COPIOUS INDEX.*

THE LAWS RELATING TO LANDLORDS AND TENANTS.

CHAPTER THE FIRST.

INTRODUCTION.

THE relation which ſubſiſts between *Landlord* and *Tenant*, or, to uſe a ſynonimous but more technical expreſſion, the privity which ſubſiſts between *leſſor* and *leſſee*, not only comprehends a very important part of human negotiation and the concerns of domeſtic life, but occaſionally gives riſe to ſome of the ſubtleſt queſtions of the *Engliſh law*.

Previous to the introduction of the *feodal tenures* into this country, during the reign of *William* the Conqueror, lands and tenements were the abſolute or free property of their reſpective owners; but when that ſyſtem of law was adopted, by the general aſſembly of the whole realm, the nation as it were ſurrendered up all its *allodial* or free lands into the king's hands, who reſtored them to the owners as a *beneficium* or FEUD, to be held to them and ſuch of their heirs as they previouſly nominated to the king. In

See Sir Martin Wright's Treatiſe on Engliſh Tenures, p. 66. Monteſquieu's Spirit of Laws, b. 31. c. 8. ib. 2 Bl. Com. 50.

conſequence of this change, it became a fundamental maxim and neceſſary principle, which, though in reality a mere *fiction*, ſtill ſubſiſts in contemplation of law, "that the "king is the univerſal LANDLORD and original proprietor "of all the land in his kingdom, and that no man doth or "can poſſeſs any part of it but what has mediately or "immediately been derived as a gift from him." The thing holden therefore, whether it conſiſt of land or houſes, is ſtiled a *tenement*, the poſſeſſors thereof TENANTS, and the manner of their poſſeſſion a *tenure*. THE TENANTS who held under the king immediately, when they granted out portions of their lands, became alſo LANDLORDS with reſpect to theſe inferior perſons, as they were ſtill TENANTS with reſpect to the king, who is ſtiled THE LANDLORD *paramount*, or above all; and thus partaking of a middle nature, were called *meſne* or middle lords. And in this manner are all the lands of the kingdom holden which are now in the hands of ſubjects. Avoiding therefore, as foreign to our preſent purpoſe, a detail of the ſeveral ſpecies of tenures introduced with the feudal ſyſtem, we ſhall content ourſelves with obſerving, that the ſlavery and oppreſſion which attended it was at length happily done away by the ſtatute *Charles* the Second (*a*), which reduced all tenures in general, except *Frankalmoin*, *Grand Sergeantry* and *Copyhold*, to a well known ſpecies of tenure called free and *Common Soccage*; and proceed to deſcribe,

(*a*) 12 Car. 2. c. 24.

FIRST. The ſeveral kinds of tenures or eſtates now in uſe in this kingdom.—SECONDLY. The modes in which a title to an eſtate may be acquired by *diſcent*.—THIRDLY. The ſeveral ways in which an eſtate may be *purchaſed* or conveyed by grant, *leaſe*, &c.—FOURTHLY. The law of eſtovers.—FIFTHLY. The law reſpecting the receipt and payment of *rents*, iſſuing from ſuch eſtates.—SIXTHLY. The means of recovering ſuch rents by *diſtreſs*, or otherwiſe.—SEVENTHLY. The law and practice of *replevin*.—EIGHTHLY. The law and practice of *ejectments*.—NINTHLY. The forms of agreements for letting houſes, apartments, *&c.* The forms of leaſes and other uſeful precedents. The forms of making memorials of leaſes, annuities, and other deeds, and of the manner of regulating the ſame.

CHAPTER THE SECOND.

The different Kinds of Eſtates.

I. A FEE-SIMPLE, is an eſtate of inheritance whereby a perſon is ſeiſed of lands, tenements or hereditaments, *to hold to him and his heirs for ever*, generally, abſolutely, and entirely; without mentioning *what* heirs, but referring that to his own pleaſure, or to the diſpoſition of the law. It is the moſt perfect tenure of any, when unincumbered with judgments, ſtatutes merchant, ſtatutes ſtaple, recognizances, mortgages, wills, pre-contracts, bargains and ſales, feoffments, fines, amerciaments, jointures, dowers, or fraudulent conveyances. But although a *fee-ſimple* is the greateſt intereſt which, by our law, a ſubject can poſſeſs in any thing capable of property, becauſe it may in fact laſt for ever, yet it may be forfeited for *treaſon* or *felony*. To conſtitute an eſtate in *fee* or of inheritance, the word "*heir*," is neceſſary in the grant or donation; for, if land be given to a man for ever, or to him and his aſſigns for ever, this veſts in him only an eſtate for life; but this rule does not extend to deviſes by will, nor to fines and recoveries, nor to grants of lands to ſole coporations and their *ſucceſſors*, nor to the caſe of the king; for a fee-ſimple will veſt in him, without the words, "*heirs*," or "*ſucceſſors*," being in the grant. The general rule, however is, that the word "*heirs*" is neceſſary to create an eſtate of inheritance.

Co. Lit. 1. 2 Inſt. 501. 4 Inſt. 192. Plowd. 498. Wright's Tenures 58. 137. 2 Bl. Com. 48.

II. A FEE QUALIFIED, is ſuch a freehold eſtate as has a qualification ſubjoined to it, and which therefore muſt determine whenever the qualification is at an end; thus if an eſtate be granted to a man and his heirs *tenants of the manor of Dale*, the moment his heirs ceaſe to be tenants of that manor, the grant is entirely defeated, and the eſtate gone.

Co. Lit. 27.

III. A FEE CONDITIONAL. This eſtate was, at the common law, a fee reſtrained to ſome particular heirs excluſive of others, as to the heirs *of a man's body*, or to the heirs *male of his body*, in which caſes it was held that as ſoon as the grantor had iſſue born, the eſtate was thereby converted into fee-ſimple, at leaſt ſo far as to enable him to ſell it, to forfeit it by treaſon or to charge it with incumbrances.

Plowd. 251. Co. Lit. 19. 1 Co. 103.

(*a*) 13 Edw. 1. c. 1. commonly called the ſtatute of Weſtminſter the Second.

But the ſtatute *de donis* (*a*) having enacted, that ſuch eſtates ſo given "to a man and *the heirs of his body*," ſhould at all events go to the iſſue, if there were any, or if none, ſhould revert to the donor, it was held that the donee had a new kind of particular eſtate which the judges denominated

Co. Lit. 186. 2 Inſt. 331. 7 Co. 38.

IV. AN ESTATE IN TAIL; which is created by force of the above-mentioned ſtatute of *Weſtminſter*. Eſtates tail are either *general* or *ſpecial*. TAIL GENERAL, is where lands or tenements are given to one, and to the heirs of his or her body, lawfully begotten: But where lands or tenements are ſettled on a man and his wife, and the heirs of their bodies between them two, lawfully to be begotten, this is a tenancy in SPECIAL TAIL. This tenure in *ſpecial tail* may be varied, to the heirs male or female, according to the will of the donor, in whom the *fee-ſimple* is veſted. An eſtate in *tail* may be barred by a common recovery; and if the tenant *in tail general*, or *ſpecial*, die without iſſue, the fee-ſimple reverts to the donor, or his lawful heirs.

Co. Lit. c. 2. Lit. § 32. 1 Roll. Rep. 184. 11 Co. 80. Co. Lit. 28.

V. AN ESTATE AFTER POSSIBILITY OF ISSUE EXTINCT. When an eſtate is granted to a man and his wife in *ſpecial tail*, if one of them die before they have iſſue, the ſurvivor is *tenant in tail after poſſibility of iſſue extinct*; or if they have iſſue, and ſuch iſſue die without iſſue, this tenancy remains in the ſurviving donee. This eſtate muſt be created by the act of God, *viz.* the death of that perſon out of whoſe body the iſſue was to ſpring; and not by limitation of the party; *ex diſpoſitione legis*, and not *ex proviſione hominis*: a poſſibility of iſſue is always ſuppoſed to exiſt in law, even though the donees be each of them a hundred years old. This tenant is not puniſhable for waſte, but he forfeits the eſtate by an alienation in fee-ſimple; he may, however, exchange with a tenant for life; for, in general, the law looks upon this eſtate as equivalent to an eſtate for life only.

Lit. § 52.

VI. AN ESTATE BY THE COURTESY. If a man marry a woman ſeiſed of lands or tenements in *fee-ſimple*, or *in general fee-tail*, or if his wife be heireſs thereto in *ſpecial tail*, and he have a child by her, male or female, born alive; he ſhall, during his life, hold the ſaid lands or tenements, during his life, as tenant by the courteſy of *England*; and although the child or children die as ſoon as born, yet if ſuch ISSUE were heard to cry, or if he can bring ſufficient teſtimony that ſuch children or any one of them were

born alive, he ſhall hold the lands during his life by this *courteſy*. To make a tenancy by the courteſy there are four things neceſſary, *viz.* 1ſt. Marriage, which muſt be canonical and legal. 2d. Seiſin of the wife; which muſt be actual and not merely a bare right to poſſeſs the lands. 3dly. Iſſue; which muſt be born alive during the life of the mother. 4thly. The death of the wife; for although by the birth of a child the huſband become *tenant initiate*, and may do many acts to charge the lands, yet his eſtate is not *conſummate* till the death of the wife. This tenure is peculiar to this country. (*a*)

(*a*) Lit. 554. Sed vide Craig b. 2. c. 19. § 4. that it prevails in Scotland when it is called *curialitas*.

VII. AN ESTATE IN DOWER. A woman who marries a man ſeiſed of lands or tenements in *fee-ſimple*, or in *general tail*, or who is heir in *ſpecial tail*, ſhall after his death, whether he leave iſſue by her or not, have her *third-part* of all ſuch lands as her huſband was ſeiſed of at any time during the coverture, as *tenant in dower*, to hold for the term of her natural life, provided ſhe be above *nine years* of age at her huſband's death: She muſt be the actual wife of the party at the time of his deceaſe, for although a *ſeparation* only from bed and board will not deſtroy dower, yet if ſhe be *divorced* from the bond of marriage ſhe ſhall not be endowed; and by the ſtatute 13 *Edw.* 3. *c.* 34. if a woman elope from her huſband and live with an adulterer, ſhe ſhall loſe her dower unleſs her huſband be voluntarily reconciled to her: By 5 & 6 *Edw.* 6. *c.* 11. alſo, the widows of *traitors*, but not the widows of *felons*, are debarred of dower. A woman may alſo be debarred of dower by levying a fine, or ſuffering a recovery, of the lands during her coverture, or by 6 *Edw.* 1. *c.* 2. may forfeit it by alienating the lands aſſigned. *Cuſtom* varies this tenure: in ſome places ſhe is intitled to *half* the produce of the eſtate, in others the *whole*, which ſhe claims as *tenant in dower* to her huſband's eſtate. The cuſtom in *Kent* is, that the wife ſhall have half the produce of the huſband's lands while ſhe remains a widow, and without a child, but as ſoon as ſhe marries again, ſhe loſes all. If a man marry a woman having lands, *&c.* he has the ſame privilege while he remains a widower, but no longer.

Co. Lit. 31. Wright's Ten. 193.

VIII. JOINTURE. By 27 *Hen.* 8. *c.* 10. commonly called the ſtatute of uſes, *dower* may be barred by a *jointure*, or by conveying a *joint eſtate* to huſband and wife and his heirs, or to the heirs of their two bodies, or of one of their bodies, or to them for their lives, or for the wife's life:

Wood's Inſt. 123. Co. Lit. 31. F. N. B. 150. Pigot on Recoveries 66. 2 Bl. Com. 137. 1 Caſes in Chan. 181.

life: But to make a perfect jointure *four things* muſt be obſerved, 1. The jointure muſt take effect immediately on the death of her huſband. 2. It muſt be for *her own life* at leaſt, and not *pur autre vie*, or for any term of years, or other ſmaller eſtate. 3. It muſt be made to herſelf and not to any in truſt for her. 4. It muſt be made, and ſo in the deed particularly expreſſed to be, in ſatisfaction of her whole dower, and not of any particular part of it (*a*); and it is provided by the ſame ſtatute that if the jointreſs be evicted of her jointure ſhe ſhall be *endowed* of ſo much of the reſidue of her huſband's lands, as ſhe was dowable of at common law, as far as the lands from which ſhe ſo evicted ſhall amount to. And if the jointure be made to her *after* marriage ſhe may either accept or refuſe it and inſiſt upon her dower at common law.

(*a*) See the caſe of Kirkman v. Thompſon. Cro. Jac. 474. Cruiſe 160.

IX. ESTATE FOR LIFE. A perſon holding lands or tenements for his *own life*, or for the term of another's life, viz. *pur autre vie*, he, as leſſee of the ſaid lands or tenements, is *tenant for life* therein, and the freehold veſts in him. A grant to a man of "the manor of *Dale*," generally, without defining any ſpecific eſtate, creates an eſtate for life, and if it do not mention for what eſtate, it ſhall be conſtrued for the life of *the grantee*; ſo a grant to a woman "during her widowhood," or to a man "until he be promoted to a benefice" ſhall be conſidered as an eſtate for life, until the contingency happens; for the time being uncertain, in theſe and ſimilar caſes, they by poſſibility may laſt for life: This eſtate is in law conſidered as the loweſt kind of freehold. A *tenant for life* is puniſhable for waſte, and may commit a forfeiture; and by 4 and 5 *Anne* all warranties made by him deſcending to any perſon in reverſion or remainder, are void. But he is intitled to *eſtovers*, (*b*) and his executors or adminiſtrators ſhall have the *emblements* or profits of the crop, if he die before harveſt, but not if the eſtate be determined by his *own act*; his leſſee, however, ſhall even in that caſe have them, for the act of the tenant ſhall not prejudice his innocent leſſee: (*c*) and by 11 *Geo.* 2. *c.* 19. *ſ* 15. the executors or adminiſtrators of tenant for life, ſhall, on his death, recover of the leſſee (*d*) a rateable proportion of the rent from the laſt day of payment to the death of ſuch leſſor; which they could not do before at common law.

Co. Lit. 41, 42. 2 Bl. Com. 120. 3 Co. 20. Hayward on Elections 58.

(*b*) Vide poſt c. 4.

(*c*) Vide poſt c. 3.

(*d*) See 8 Ann c. 14. ſ. 6. as to diſtreſs for the rent arrear, poſt c. 6.

Co. Lit. 44. 2 Bl. Com. 140.

X. TENANT FOR YEARS. A man demiſing lands, tenements, *&c.* to another for a limited number of years, the leſſee

leſſee is, in law, conſidered as a *tenant for years*, provided he enter on the premiſſes by virtue of ſuch leaſe. This tenancy may be created by word of mouth, and is called in law a parol leaſe, which binds the leſſor ſo long as the ſame was agreed for. (*a*) If the leaſe be but for half a year, or a quarter, or any leſs time, the leſſee is ſtill conſidered as a tenant *for years*; a year being the ſhorteſt term which the law in this caſe takes notice of: and indeed every eſtate which muſt expire at a period certain and prefixed is an eſtate for years, and is therefore frequently called *a term*; this eſtate therefore muſt have a certain beginning and end: but *id certum eſt quod certum reddi poteſt*; therefore if a man make a leaſe for ſo many years as *J. S.* ſhall name, it is a good leaſe for years, for though at firſt uncertain, yet when *J. S.* hath named the years it is reduced to a certainty: and if no day of commencement be named in the creation of this eſtate, it begins from the making or delivery of the leaſe.

XI. TENANT AT WILL is where lands are demiſed to another *To hold* to him at *the will* of the leſſor; and by force of this demiſe the leſſee becomes poſſeſſed of ſuch lands, *&c.* This tenancy is no longer durable than while the leſſor or leſſee pleaſes; for the leſſor, in this caſe, cannot oblige the leſſee to continue on the lands againſt his will, and therefore if either diſlike, he may give the other *legal notice*, and ſo determine the will; for the holding here is reciprocal. In all caſes (*a*) of leaſes at will of *lands* to hold from *year to year*, and ſo for as long time as both parties ſhall pleaſe, the landlord, before he can have title to bring an ejectment againſt the tenant at will, muſt give the tenant *half a year's notice* to quit poſſeſſion of the farm. And the like notice is neceſſary as to *houſes* let at will, unleſs there be ſome uſage or cuſtom (of the place or diſtrict where the houſe is ſituate) to give a ſhorter or other kind of notice to quit; and it muſt, in this caſe, be *half a year's* notice, for *ſix months* notice is not ſufficient, and the notice muſt expire at the time when the tenancy commenced (*b*).

Co. Lit. 56. 2 Bl. Com. 145.

(*a*) Determined by eleven judges on the motion of Gould, J. preſent Ld. Mansfield and Ld. Ch. J. De Grey.

(*b*) Determined Eaſter Term 26 Geo. 3. 1 Term Rep. 159.

(*a*) By 29 Car. 2. c. 3. All leaſes, eſtates, intereſts of freehold, terms of years or any uncertain intereſt therein, created by livery and ſeiſin only, or by parol, and not put in writing and ſigned by the parties, ſhall have the force and effect of leaſes or eſtates *at will* only, *except* all leaſes not exceeding the term of three years from the making thereof, in which the rent reſerved ſhall amount to two-thirds of the improved value.

Co. Lit. 57. 2 Bl. Com. 150. 5 Mod. 384.

XII. TENANT AT SUFFERANCE. If a man hold lands of another by leaſe for a term of years, and keep poſſeſſion thereof after the term is expired, ſuch perſon in law is called *a tenant at ſufferance*; this tenancy is begot by the *laches* of his leſſor. But by the ſtatute 4 *Geo.* 2. *c.* 28. in caſe any tenant for life or years, or other perſon claiming under, or by colluſion with ſuch tenant, ſhall wilfully hold over after the determination of the term, and demand made in writing for recovering the premiſſes, the perſon holding over ſhall pay for the time he continues *at the rate of double the yearly value* of the lands ſo detained.

2 Bl. Com. 147. Co. Lit. 58. 3 Co. 7. 1 Rol. Abr. 498.

XIII. COPYHOLDS. Perſons having lands and tenements *To hold* to them and their heirs in *fee-ſimple*, *fee-tail*, or for the *term of their lives*, or on any other condition at the will of a ſuperior lord, after the cuſtom of his manor, ſuch perſons are called COPYHOLDERS, or *tenants by copy of court-roll*; a copy of ſuch court-roll or entry in the court books of the ſaid manor (of which the tenant has a tranſcript ſigned by the ſteward) being all the evidence or title they have to ſhew for their right to the ſaid lands, *&c.* *Copyhold tenures* are derived from the ancient tenure of *pure villenage*, and vary in different parts of *England*, according to the cuſtom of the reſpective manors to which they belong; and it is held, that a tenant of a copyhold eſtate is as well inheritable therein as one that has a *fee-ſimple*, provided he comply with the cuſtom of the manor, and perform and pay his ſervices due and of right belonging to the lord thereof.

Lit. § 309. 2 Bl. Com. 189. Co. Lit. 163.

XIV. COPARCENARY. Tenants in *co-parcenary* are of two kinds, *viz.* PARCENERS at *common law*, and by *cuſtom*. By the courſe of the common law, when a party, either male or female, is ſeiſed of an eſtate in *fee-ſimple* or *fee tail*, and dies, leaving iſſue only daughters, the eſtate deſcends to them all equally as co-heirs; or if a man, ſeiſed of lands, die without iſſue, the eſtate deſcends to his ſiſters as co-heireſſes; or if he has no ſiſters, and it deſcend to his aunts, they are alſo co-heireſſes, or *tenants in co-parcenary*. Where there are ſeveral co-parceners, and one dies, leaving iſſue before partition made, the ſhare or intereſt of the deceaſed deſcends to her iſſue; and if one die, without iſſue, the ſhare deſcends equally to the co-heirs. Concerning partition of land in *co-parcenary*, *joint-tenancy*, and *tenancy in common*, ſee 8 and 9 *W.* 3. *c.* 3. and 7 *Ann.* *c.* 18.

XV. PARCENERS BY CUSTOM. In *Kent*, and ſome few other places in *England*, and in *North Wales*, if a man is ſeiſed in *fee-ſimple*, or *fee-tail*, of an eſtate held by the tenure of *gavel-kind*, and has iſſue, the ſons after his death ſhall be all co-heirs, and equally inherit thoſe lands, *&c.* and are called *parceners by cuſtom.* Co. Lit. 176. b. 1 Sid. 136. Plow. 129.

XVI. JOINT-TENANTS. When a man, ſeiſed of an eſtate in *fee*, does enfeoff ſeveral perſons *To hold* to them and their heirs, or *To hold* to them for the term of their natural lives, or for the life of another, and they become ſeiſed by virtue thereof; or if ſeveral perſons diſſeiſe another of an eſtate to their joint uſe, ſuch are termed *Joint-tenants.* The nature of this tenure is, that the whole eſtate paſſes to the ſurvivor in whom it veſts in *fee-ſimple* to him and his heirs. This ſurvivorſhip takes place among all perſons who have joint-eſtates or poſſeſſion with others in chattels real, or perſonal, as leſſees, *&c.* Where there are ſeveral joint-tenants for life, and one grants a term out of his moiety for a certain annual rent, but dies before ſuch term is expired, it holds againſt the ſurvivor; but the rent ceaſes. Among co-heirs or co-parceners the rent does not ceaſe. Co. Lit. 180. 2 Inſt. 527.

XVII. TENANTS IN COMMON. Perſons who have lands, *&c.* by ſeveral, and not joint titles, and the ſeveralty not diſtinguiſhed whether in *fee-ſimple*, *fee-tail*, or *for life*, are deemed *Tenants in common.* If lands be conveyed by leaſe and releaſe to the uſe of all and every the children of *J. G.* and their heirs equally to be divided amongſt them; theſe words "*equally to be divided*" make a tenancy in common. If a tenant in common alien his ſhare to another in fee, or give it to another in tail, ſuch alienee or donee becomes tenant in common with the other joint-tenants: and if he prove ſurvivor, is intitled to the fee. The ſame doctrine which holds among tenants in common, in eſtates in fee-ſimple, or fee-tail, holds alſo between tenants for life. Where two perſons have held lands in common undivided, one half from his anceſtors from whom the eſtate deſcended to them undivided from time immemorial, ſuch are tenants in common by *title of preſcription.* The eſſential difference between joint-tenants, and tenants in common, conſiſts in this, joint-tenants hold the eſtate by one joint title, and in one right; and *tenants in common* hold by ſeveral titles, or by one title and ſeveral rights; whereas a joint-tenant enjoys one joint freehold, and tenants in common ſeveral. (*a*) Co. Lit. 189. 2 Will. 341. Cowp. 660. 1 Term Rep. 759.

(*a*) The poſſeſſion of one tenant in common ſhall be conſidered as the poſſeſſion of the other. Cowp. 219.

Co. Lit. 205. Wood's Inſt. 238. 2 Bl. Com. 157. Precedents in Chancery 71. 2 Peer Wms. 404. 3 Bl. Com. 435. See this ſubject treated with great perſpicuity by Mr. Powell in his Law of Mortgages.

XVIII. MORTGAGE ESTATE. The word mortgage is derived from the word *mort* dead, and *gage* a pledge, and ſignifies a pawn of land, *&c.* for money borrowed, upon condition that the land, *&c.* ſhall become the property of the lender, if the money be not repaid at the day agreed. He that mortgages or pawns is called the *mortgagor*, and he to whom the mortgage is made is called the *mortgagee*. This eſtate is uſually made by a leaſe for a long term of years, or by aſſignment of a ſubſiſting leaſe, or by a conveyance, by leaſe and releaſe, of the fee itſelf; and while the creditor thus holds the land, he is called *Tenant in mortgage*: but it is generally agreed that the *mortgagor* ſhall hold the land, *&c.* until he fail to redeem it by payment of the money borrowed; and even if he fail, the court of chancery will in its equity allow him a further time for *redemption*; for as the mortgagee cannot ſell the eſtate without a bill to *foreclose*, the court will oblige him to do what is right, under all the circumſtances of the caſe. The legal intereſt of a mortgagor in poſſeſſion is inferior to that of a mere ſtrict tenant at will, and therefore notice to quit is not neceſſary on this ſpecies of eſtate to ſupport an ejectment; neither has the mortgagee any right to make leaſes, and therefore whoever wiſhes to be ſecure when he takes a leaſe, ſhould examine the title deeds (*a*). By 7 *Geo.* 2. *c.* 20. if any action ſhall be brought, or bill filed, to compel payment of money on mortgages, and the mortgagor ſhall pay principal, intereſt, and coſts into court, ſuch ſuits ſhall be immediately determined, and ceaſe.

(*a*) Ketch v. Hale Dougl. 22, 23 and 1 Term Rep. 383.

2 Bl. Com. 161.

XIX. ESTATE BY ELEGIT, is an eſtate of which a creditor is put into poſſeſſion by the ſheriff, on the writ of execution called, an *elegit*, after having obtained a judgment at law againſt the owner of ſuch eſtate. The creditor in this caſe is put in poſſeſſion of *one half* his debtor's lands and tenements, to be held, occupied, and enjoyed, until his debt and damages are fully paid; and during the time he ſo holds them, he is called *Tenant by elegit*.

2 Bl. Com. 160. Wood's Inſt. 241.

XX. ESTATE BY STATUTE MERCHANT is created by virtue of a bond, or obligation of record, entered into purſuant to the ſtatute 31 *Edw.* 1. *de mercatoribus*, conditioned that if the debtor pay not the debt at the day, execution may be awarded upon body, land and goods, and that the obligee, or creditor, may hold the whole lands to him, his heirs and aſſigns, till the debt be levied and paid.

XXI. AN ESTATE BY STATUTE STAPLE is alſo obtained by execution on a bond of record acknowledged, purſuant to 27 *Edw.* 3. *c.* 9. by virtue of which the obligee may poſſeſs himſelf of the lands of his debtor, until the amount of the bond be paid. 4 Inſt. 238. Wood 141.

XXII. ESTATES IN ANCIENT DEMESNE, are certain manors which were the ancient *demeſnes* of THE CROWN, and therefore not ſubject to the feodal ſyſtem of tenure. 1 Com. Dig. 346.

XXIII. AN ESTATE IN REMAINDER, is the reſidue of an eſtate in land depending on a particular eſtate, and created together with the ſame. *A particular eſtate* is that which is derived from or out of a general or greater eſtate: as if a man, who is ſeiſed in *fee-ſimple*, grant his eſtate to another for life, or let it for term of years, with *remainder* over to a third perſon in fee, or for life, or in tail. Co. Lit. 49. 143. 2 Bl. Com. 164. Wood's Inſt. 147.

XXIV. AN ESTATE IN REVERSION, is the reſidue of an eſtate left in the grantor to commence in poſſeſſion after the determination of ſome *particular eſtate* granted out by him. Thus if a man make a gift in tail, and the donee die without iſſue, the reverſion of the fee is, without any ſpecial reſervation, veſted in the donee by act of law: and ſo alſo the reverſion, after an eſtate for life, for years, or at will, continues in the LANDLORD or leſſor, after the TENANT'S eſtate is determined or expired. Skin. 341. 3 Peer Wms. 258. Co. Lit. 22.

CHAPTER THE THIRD.

The Law of Deſcents.

DESCENT, or *hereditary ſucceſſion*, is the title whereby a man, on the death of his anceſtor, acquires his eſtate by right of repreſentation as his heir at law: AN HEIR therefore is he upon whom the law caſts the eſtate immediately on the death of the anceſtor; and an eſtate ſo deſcending to the heir, is called THE INHERITANCE. The doctrine of diſcents or law of inheritances in *fee-ſimple*, is a point of the higheſt importance, and depends on the nature of *kindred*, and the ſeveral degrees of *conſanguinity*, which is defined to be "the connection or relation of perſons deſcended from the ſame ſtock or common anceſtor." This conſanguinity, or deſcent, Co. Lit. 18. 2 Bl. Com. 201. Co. Lit. 10. 1 Vent. 415. Wood's Inſt. 211.

deſcent, is either *lineal* or *collateral*. Lineal conſanguinity is a deſcent downwards in a right line, as from grandfather to father, and grandſon. Collateral is a deſcent which ſpringeth out of the ſide of the whole blood, as grandfather's brother, father's brother, *&c.* The following are the rules or canons of inheritance according to which eſtates are tranſmitted from THE ANCESTOR TO THE HEIR.

The firſt canon of inheritance.

Lit. 63. Bracton b. 2. fo. 65. Britton c. 119. fo. 271. Fleta b. 6. c. 1. ſ. 14.

1ſt. "Inheritances ſhall lineally *deſcend* to the iſſue of the "perſon laſt actually ſeiſed *in infinitum*, but ſhall never "lineally *aſcend*." Therefore if there be grand-father, father, and ſon, and the father purchaſe land and die, his ſon ſhall ſucceed him as heir, and not the grand-father, to whom the land ſhall never aſcend, but ſhall rather eſcheat to the lord. So alſo if the ſon purchaſe land and die without iſſue, his father cannot inherit, but it muſt deſcend to the heirs on the part of the father, *viz.* the father's brother. But though the uncle is preferred before the father in deſcent from the ſon, yet if the uncle enter after the death of the ſon, and die without iſſue, the father ſhall inherit to the uncle.

The ſecond canon of inheritance.

Hale's Hiſ. C. L. 235. 2 Bl. Com. 213.

2d. "The *male* iſſue ſhall be admitted before the *female*." Thus if a man hath two ſons and two daughters, and die, his eldeſt ſon ſhall firſt inherit, and if he die without iſſue, then his ſecond ſon ſhall inherit in preference to the two daughters: thus alſo if *A.* has iſſue two ſons, *B.* and *C*; and *B.* has iſſue a ſon and daughter, *D.* and *E*; and *D.* the ſon has iſſue a daughter *F*; and *E.* the daughter has iſſue a ſon, *G*; neither *C.* nor any of his deſcendants ſhall inherit ſo long as there are any deſcendants from *D.* and *E*; neither ſhall *E.* the daughter, nor any of her deſcendants inherit ſo long as there are any deſcendants from *D.* the ſon, whether they be male or female.

The third canon of inheritance.

Hale's Hiſ. C.L. 238. Co. Lit. 13. a Glanvil, b. 13. ch. 3.

3d. "Where there are two or more males in equal de- "gree, the eldeſt only ſhall inherit, but the females alto- "gether." Thus if a man hath two ſons and two daughters, the eldeſt ſon ſhall alone ſucceed in excluſion of the ſecond ſon and both the daughters; but if both the ſons die without iſſue *before the father*, the daughters ſhall inherit the eſtate as coparceners.

The fourth canon of inheritance.

Hale's Hiſ. C. L. 236, 237. 2 Bl. Com. 217.

4th. "The lineal deſcendants *in infinitum* of any perſon "deceaſed ſhall repreſent their anceſtors; that is, ſhall "ſtand in the ſame place as the perſon himſelf would have "done had he been living." Thus the child, grand-child, or great grand-child, either male or female, of the eldeſt ſon,

ſon, ſucceeds before the younger ſon, and ſo *in infinitum*: and theſe repreſentatives ſhall take neither more nor leſs, but juſt ſo much as their principals would have done: therefore if a man has two daughters, and the eldeſt die in the father's life, leaving ſix daughters, and then the father dies, *his* younger daughter ſhall have an equal ſhare with *her* ſix nieces; and ſo through all the degrees of ſucceſſion by right of repreſentation, the right of proximity is transferred from the root to the branches, and gives them the ſame preference as the next and neareſt of blood.

The fifth ca of inheritan Co. Lit. 12 2 Bl. Com.

5. "On failure of lineal deſcendants, or iſſue of the per- "ſon laſt ſeiſed, the inheritance ſhall deſcend to the blood "of the firſt purchaſer, ſubject to the three preceding "rules." The firſt purchaſer is he who firſt acquired the eſtate to his family, whether the ſame was transferred to him by ſale, or by gift, or by any other method, except only that of deſcent. Thus if *A.* purchaſe land, and it deſcend to *B.* his ſon, and *B.* die ſeiſed thereof without iſſue, whoever ſucceeds to this inheritance muſt be of the blood of *A.* the firſt purchaſer of this family. Thus, alſo if a ſon purchaſe land, and die without iſſue, it ſhall deſcend to the heirs of the part of the father; and if he have none, then to the heirs of the part of the mother (*a*). But if the father purchaſe lands, and they deſcend to the ſon, who dies without iſſue, and without any heir on the part of the father, it ſhall not deſcend in the line of the mother, but *eſcheat*. If there be none of the blood of the grand-father, yet it may reſort to the blood of the grand-mother, her blood being as well of the blood of the father, as the mother's conſanguinity is of the blood of the ſon. If the grand-father purchaſe lands, which deſcend to the father, and from him to the ſon, if the ſon enter and die without iſſue, his father's brothers or ſiſters, or their deſcendants, or, for want of them, his great grand-father's brothers or ſiſters, or their deſcendants, or, for want of them, any of the conſanguinity of the great grand-father, or brothers or ſiſters of the grand-mother, or their deſcendants, may inherit; the conſanguinity

(*a*) See 2 Bl. Com. 221, 222, 229. That all lands granted in fee ſimple, are at this day held as a feud of indefinite antiquity, and are inheritable *as if they had deſcended* from ſome uncertain indefinite anceſtor, and therefore any of the collateral kindred of the real *modern purchaſer*, (and not his own offspring only) may inherit them, provided they be of the *whole blood*; for all ſuch are in judgment of law likely enough to be derived from their indefinite anceſtor, but thoſe of the *half blood* are excluded for want of the ſame probability.

of

of the great grand-mother being the conſanguinity of the father. But none of the line of the mother or grand-mother, *viz.* the grand-father's wife, ſhall inherit; for they are not of the blood of the firſt purchaſer. NOTE. The ſame rule holds in purchaſes in the line of the mother or grand-mother; they ſhall always keep in the ſame line that the firſt purchaſer ſettled them in. But it is not neceſſary that he who inherits be always *heir* to the purchaſer; it is ſufficient if he be of his *blood*, and *heir* to him that was *laſt ſeiſed*; for if the father purchaſed lands which deſcended to the ſon, who dies without iſſue, they ſhall never deſcend to the heir of the part of the ſon's mother; but if the ſon's grand-mother has a brother, and the ſon's great grand-mother has a brother, and there are no other kindred, they ſhall deſcend to the grand-mother's brother; and yet if the father had died without iſſue, his grand-mother's brother ſhould have been preferred before his mother's brother, becauſe the former was heir on the part of his father, though a female, and the latter was only heir on the part of his mother. But where the ſon is once ſeiſed, and dies without iſſue, his grand-mother's brother is to him heir of the part of his father, and being nearer than his great grand-mother's brother, is preferred in the deſcent. But this is always intended ſo long as the line of deſcent is not broken; for if the ſon alien thoſe lands, and then purchaſe them again in fee, *then* the rules of deſcent are to be obſerved, as if he was the original purchaſer, and as if it had been in the line of the father or mother.

Hale's Hiſt. Com. Law, 217. 229. Co. Lit. 12. 2 Bl. Com. 221, 222.

6th. "The collateral heir of the perſon laſt ſeiſed muſt "be his next collateral kinſman of the whole blood;" that is, on failure of iſſue of the perſon laſt ſeiſed, the inheritance ſhall deſcend to the iſſue of a next immediate anceſtor. And, 1ſt. He muſt be his next collateral kinſman, either perſonally or *jure repreſentationis*. 2dly. He muſt be the neareſt kinſman of *the whole blood*; for if there be a much nearer kinſman of *the half blood*, a diſtant kinſman of the whole blood ſhall be admitted, and the other entirely excluded (*a*). A kinſman of the whole blood is he that is derived not only from the ſame anceſtor, but from the ſame couple of anceſtors; for as every man's own blood is compounded of the blood of his reſpective anceſtors, he only is properly of the whole or entire blood of another, who hath (ſo far as the diſtance of degrees will permit) all the ſame ingredients in the compoſition of his blood that the

The ſixth canon of inheritance. 2 Bl. Com. 224.

(*a*) See the arguments in caſe of Newman v. Newman, 3 Wilſ. 516.

the other hath. Thus if a ſon purchaſe land in fee ſimple, and die without iſſue, thoſe of the male line aſcending to infinity ſhall be preferred in the deſcent according to their proximity of degree to the ſon, as the fathers, brothers and ſiſters, and their deſcendants, ſhall be preferred before the brothers of the grand-father and their deſcendants. If the father has no brothers nor ſiſters, the grandfather's brothers and their deſcendants take the eſtate. For want of brothers, his ſiſters and their deſcendants ſhall be preferred before the brothers of the great grand-father; for although the father or grand-father cannot immediately inherit to the ſon, yet the direction of the deſcent to the collateral aſcending line is as much as if the father or grandfather had been by law inheritable; and therefore as in caſe the father had been inheritable, and ſhould have inherited to the ſon before the grand-father, and the grand-father before the great grand-father, and conſequently if the father had inherited and died without iſſue, his eldeſt brother and his deſcendants would have inherited before the younger brother and his deſcendants; and if he had no brothers, the ſiſters and their deſcendants would have inherited before his uncles, or the grandfather's brothers and their deſcendants: ſo, though the father is excluded from inheriting, yet the deſcent is directed as it would have been had the father inherited, *viz.* it lets in thoſe firſt that are in the next degree to him. Thus if lands deſcend to the eldeſt ſon from the father, and the ſon enter and die without iſſue, his ſiſter of the *whole blood* ſhall inherit as heir to the brother, and not the younger ſon of the *half blood*; but if the eldeſt ſon had ſurvived the father, and died before entry, the youngeſt ſon would inherit as heir to the father, and not the ſiſter, becauſe he is heir to the perſon who was laſt actually ſeiſed.

Year Book, 12 Edw. 4. pl. 14. Fitzherbert's Abr. "Deſcent." 2. Broke's Abr. 38. Hale's Co. Law 243. 2 Bl. Com. 223.

1 Sid. 193. 1 Lev. 60. 12 Mod. 619.

7th. "In collateral inheritances the male ſtocks ſhall "be preferred to the female (that is kindred derived from "the blood of the male anceſtors ſhall be admitted before "thoſe from the blood of the female) unleſs where the "lands have, in fact, deſcended from a female"—Thus: 1ſt. The line of the part of the mother ſhall never inherit ſo long as there are any, tho' never ſo remote, of the line of the part of the father; as if the mother has a brother, yet if the great great great grand-father, or great great great grand-mother of the father has a brother or ſiſter, he or ſhe ſhall be preferred, and exclude the mother's

The ſeventh canon of inheritance. Lit. § 4. 2 Bl Com. 234.

ther's brother, tho' he is much nearer.—2d. THUS ALSO, The male line of the part of the father aſcending, ſhall for ever exclude the female line of the part of the father aſcending: as if a ſon, purchaſe lands and die without iſſue, the ſiſter of the father's grand-father, or of his great grand-father, and ſo *ad infinitum*, ſhall be preferred before the father's mother's brother, although the father's mother's brother be a male, and the father's grand-father or great grand-father's ſiſter be a female, and more remote; yet ſhe is of the male line, which is more worthy than the female line, tho' the female line is alſo of the blood of the father.—BUT, 3dly. As, in the male line aſcending, the more near is preferred before the more remote; ſo in the female line deſcending, if it be of the blood of the father, the more near is preferred before the more remote: thus, if one purchaſe lands and die without iſſue, and the father, grand-father, and great grand-father, and ſo upwards, all the males being dead, without any brother or ſiſter, or any deſcending from them, but the father's mother or ſiſter has a brother; all theſe are of the blood of the father, and the remoteſt of them ſhall exclude the ſon's mother's brother; and tho' the great grand-mother's blood has paſſed through more males of the father's blood than the blood of the grand-mother or mother of the father; yet the father's mother's ſiſter ſhall be preferred before the father's grand-mother's brother, or the great grand-mother's brother; becauſe they are all in the female line, and the father's mother's ſiſter is the neareſt in the male line, ſo ſhe ſhall have the preference, as well as in the male line aſcending, the father's brother or his ſiſter ſhall be preferred before the grand-father's brother.—4thly. BUT ALTHOUGH in this laſt caſe where the ſon purchaſes lands, and dies without iſſue, and without any heir on the part of the grand-father, the lands deſcend to the grand-mother's brother or ſiſter, as heir on the part of his father; yet if the father had purchaſed theſe lands and died, and it had deſcended to his ſon, who died without iſſue, the lands ſhould not have deſcended to the father's mother's brother or ſiſter, for the reaſons in the *ſecond rule*, but for want of brothers or ſiſters of the grand-father's great grand-father, and ſo upwards in the male aſcending-line, it ſhould deſcend to the father's grand-mother's brother or ſiſter which is his heir of the part of the father, who ſhould be preferred before the father's

ther's mother's brother, who is the heir of the part of the mother of the purchaſer, tho' the next heir of the part of the father of him that laſt died ſeiſed, and therefore, if the father who was the purchaſer had died without iſſue, the heirs of the part of the father, whether of the male or female line, ſhould have been preferred before the heirs of the part of the mother: So the ſon, who ſtands now in the place of the father, and inherits to him primarily in his father's line, dying without iſſue, the ſame devolution and hereditary ſucceſſion ſhould have been as if his father had immediately died without iſſue, which ſhould have been to his grand-mother's brother, as heir of the part of the father, tho' by the female line, and not to his mother's brother, who was only heir of the part of his mother, and who is not to take till the father's line both male and female be ſpent.—5thly. So ALSO, if the ſon purchaſe land, and die without iſſue, and it deſcend to any heir of the part of the father, and then the line of the father after entry and poſſeſſion fail, it ſhall never return to the line of the mother; tho' in the firſt inſtance, or firſt deſcent from the ſon, it might have deſcended to the heir of the part of the mother. For now by this deſcent and ſeiſin it is lodged in the father's line to whom the heir of the part of the mother can never derive a title as heir, but it ſhall rather *eſcheat*. But if the heir of the part of the father had not *entered*, and then the line had failed, it might have deſcended to the heir of the part of the mother, as heir to the ſon, to whom immediately, for want of heirs of the part of the father, it might have deſcended.—AND FOR THE SAME REASON if it had once deſcended to the heir of the part of the father of the grand-father's line, and the heir had entered, it ſhould never deſcend to the heir of the part of the father of the grand-mother's line; becauſe the line of the grand-mother was not of the blood or conſanguinity of the line of the grand-father's ſide.—AND 6thly. If for default of heirs of the *purchaſer* of the part of the father, the lands deſcend to the line of the mother; the heirs of the mother of the part of her father's ſide ſhall be preferred in ſucceſſion before her heirs of the part of her mother's ſide, becauſe the heirs of the part of her father are the more worthy.

DESCENTS BY CUSTOM. Deſcents in fee-ſimple *by cuſtom* are of ſeveral kinds: ſometimes to all the ſons, or to all the brothers where one brother dies without iſſue, as in *gavel-kind*. All the lands in *England* were in nature of

See Mr. Robinſon's very excellent and learned Treatiſe upon the

nature of gavelkind land, and deſcents by cuſtom.

gavel-kind before the *Norman* Conqueſt, and deſcended to all the iſſue equally; but, as the *Normans* did not conquer *Kent*, this *cuſtom* or tenure is ſtill preſerved in ſome places there. Sometimes the lands deſcend to the youngeſt ſon, as in *Borough Engliſh*; and ſometimes to the eldeſt daughter or the youngeſt.

2 Bl. Com. 202. Vide ante c. 1. ſ. 4.

DESCENTS BY STATUTE, are thoſe which take place in fees in tail *per formam doni* in purſuance of the ſtatute of *Weſtminſter* the ſecond, in which the deſcent is reſtrained and regulated according to the words of the original donation and does not intirely purſue the common law doctrine of inheritance.

CHAPTER THE FOURTH.

The Law of Purchaſe by DEEDS *and* LEASES.

Co. Lit. 3. b. 18. a, 22, 163.

1. PURCHASE, in a legal ſenſe, not only includes ſuch acquiſition of lands, as are obtained by way of bargain and ſale for *money* or ſome other valuable conſideration, but every other method of coming to *an eſtate*, except that by *inheritance* or DESCENT: And therefore if a perſon *grant* or even freely *give* land to another, *the grantee* in the firſt caſe, and *the donee* in the ſecond, is, in the eye of the law, A PURCHASER.

2 Bl. Com. 241.

2. The word *purchaſe*, when uſed in its legal ſenſe, includes the five following methods of acquiring a *title* to real eſtates, *viz.* by eſcheat, occupancy, preſcription, forfeiture, and alienation; but the moſt uſual and univerſal method of acquiring ſuch title is by this laſt ſpecies called ALIENATION, conveyance, or purchaſe in its more limited ſignification.—Of *alienation* alſo there are ſeveral kinds, as by deed, record, ſpecial cuſtom, and deviſe; but, upon the preſent occaſion we ſhall only take notice of the mode of alienating eſtates by the kind of *deed* called A LEASE (*a*) that being the inſtrument by which the relation of LANDLORD AND TENANT, or, in other words, of *leſſor and leſſee* is, in general, conſtituted; it may, however, be created as well by AN AGREEMENT *for a leaſe*, as by A LEASE itſelf.

(*a*) By 6 & 7 Ann c. 20. all deeds of purchaſe, &c. in the counties of *Middleſex* and *York* are to be regiſtered.

3. A LEASE is a ſpecies of conveyance, uſually made in conſideration of RENT or other annual recompence, by which an

an eſtate for life, for years, or at will may be created in lands, tenements, or hereditaments whether *corporeal*, or incorporeal, by the words "demiſe, grant, and to farm, let." It muſt always be made for *a leſs time* than the leſſor hath in the premiſſes; for, if it be made for *the whole intereſt*, it is more properly *an aſſignment* than a leaſe.—A leaſe *for years* may be made to commence at a day to come, provided it be certain; for every ſuch eſtate muſt have a certain beginning and ending; (*a*) but a leaſe *for life* cannot be made to commence *in futuro*, becauſe a leaſe for life is, in contemplation of law, a freehold, (*b*) and no freehold can commence *in futuro*. A leaſe does not veſt the eſtate in the leſſee, but only gives him a right to enter and poſſeſs it; and therefore the eſtate is not veſted in him till actual entry. To a leaſe for life of *incorporeal hereditaments*, livery of *ſeizin* is a neceſſary incident, but to no other.

(*a*) Vide ante p. 7.

(*b*) Vide ante p. 6.

Co. Lit. 44. 2 Bl. Com. 318.

4. A tenant in *fee-ſimple* being poſſeſſed of the whole intereſt in the eſtate may let leaſes of any duration; a tenant *for life* can only make leaſes during his own life, but cannot bind the reverſioner unleſs he be empowered ſo to do by the perſon from whom his eſtate was derived.

3 Bac. Abr. 398. Co. Lit. 47. 6 Co. 15.

5. A tenant *in tail* alſo by the common law could not make any leaſes which ſhould bind the iſſue in tail, but by 32 *Hen.* 8. *c.* 28. he is enabled to make leaſes to endure, for three lives, or one and twenty years, ſo as to bind the iſſue in tail, but not thoſe in remainder or reverſion, provided, 1ſt. That the leaſe be by indenture and not by deed poll, or by parol. 2dly. That it begin from the making or day of the making, and not at any greater diſtance of time. 3dly. That if there be any old leaſe in being it be firſt abſolutely ſurrendered, or be within a year of expiring. 4thly. That it be *either* for twenty-one years *or* three lives and not for both. 5thly. That it *exceed* not the term of three lives or twenty-one years. 6thly. That it be of *corporeal* hereditaments (*a*). 7thly. That it be of lands and tenements moſt commonly letten for twenty years paſt; that is for above half the time, or eleven years out of the twenty.

3 Bac. Abr. 310. Co. Lit. 45. 2 Bl. Com. 318. 3 Com. Dig. 239.

(*a*) By 5 Geo. 3. c. 17. A leaſe of tithes or other *incorporeal* hereditaments alone, may be granted by any biſhop or eccleſiaſtical or eleemoſynary corporation, and the ſucceſſor ſhall be intitled to recover the rent by an action of debt, which (in caſe of freehold leaſes) he could not have brought at common law. 2 Bl. Com. 319.

8thly. That the moſt uſual and cuſtomary rent for twenty years paſt be reſerved yearly on the leaſe. And 9thly. That it be not made "without impeachment of waſte."

3 Bac. Abr. 305. Co. Lit. 45. Cro. Jac. 563. Cro. Car. 165.

6. A huſband ſeiſed of lands *jure uxoris*, could not, at the common law, make a firm or valid leaſe for any longer term than the joint lives of himſelf and his wife, for then his intereſt expired; but by the abovementioned ſtatute 32 *Hen.* 8. *c.* 28. a huſband ſo ſeiſed of lands in fee-ſimple or fee-tail, provided the wife join in the conveyance, may make a leaſe for three lives or one and twenty years to bind her and her heirs; but the ſame requiſites muſt be obſerved as in leaſes made by a tenant in tail.

(*a*) 32 Hen. 8. c. 28. 1 El. c. 19. 13 El. c. 10. 14 El. c. 11. 14 El. c. 14. 18 El. c. 11. 43 El. c. 29.

7. Eccleſiaſtical perſons, that is all colleges, cathedrals and other eccleſiaſtical or eleemoſynary corporations, are alſo by the *enabling* and *diſabling* ſtatutes (*a*) as they are called, authoriſed to make leaſes to bind their ſucceſſors, provided, 1ſt. they do not exceed twenty-one years or three lives from the making. 2dly. That the accuſtomed rent or more be yearly reſerved thereon. 3dly. That when there is an old leaſe in being, no concurrent leaſe ſhall be made unleſs where the old one will expire within three years. 4thly. That ſuch leaſe be not made *without impeachment of waſte*—THEY are alſo empowered by the ſaid ſtatute to let houſes in corporation or market towns for *forty years* provided they be not the manſion houſes of the leſſors, nor have above ten acres of ground belonging to them, and the leſſee be bound to keep them in repair.

Co. Lit. 44. 2 Bl. Com. 321.

8. Parſons or vicars, are by the above ſtatutes *reſtrained* from making longer leaſes than for twenty-one years or three lives: but to enable them to make any leaſes at all ſo as to bind the ſucceſſor, they muſt firſt obtain the conſent of the patron and ordinary; and though leaſes contrary to theſe acts are declared void, yet they are good againſt the *leſſor* during his life; for they were intended for the benefit of the ſucceſſor only; and no man ſhall take advantage of his own wrong. In caſe alſo, that any *beneficed clergyman* (*b*) be abſent from his cure above fourſcore days in any one year he ſhall not only forfeit a year's profit of his benefice, to be diſtributed among the poor of the pariſh, but all leaſes made by him of the profits of ſuch benefice, and all covenants and agreements of like nature ſhall ceaſe and be void; except in the caſe of *licenſed pluraliſts* who are allowed to demiſe the living on which they are non-reſident

(*b*) 13 El. c. 20. 14 El. c. 11. 18 El. c. 11. 43 El. c. 9.

ſident to *their curates* only; provided ſuch *curates* do not abſent themſelves above *forty days* in any one year.

9. Infants or ſuch as are under the age of twenty-one years may make leaſes, but they may avoid them on their attaining their full age. 3 Bac. Abr. 304.

10. Executors and adminiſtrators, as they may diſpoſe of *terms* abſolutely veſted in them in right of their teſtators or inteſtates, ſo may they leaſe the ſame for any fewer number of years; and the rent reſerved on ſuch leaſes ſhall be aſſets in their hands and go in a courſe of adminiſtration. 3 Bac. Abr. 405. 6 Co. 63.

11. If a tenant for life in lands, *&c.* leaſe the ſame for a certain number of years, and the leſſee aſſign ſuch lands by *parol* without deed, rendering rent, though ſuch aſſignment operates as a ſurrender, yet it is not an expreſs ſurrender; (*a*) and if the rent reſerved thereon was not good by way of *reſervation*, yet it ſhall be deemed good by way of *contract*.—But if a leſſee for years accept a new leaſe from his leſſor it will be a ſurrender in law, for this affirms him able to make a leaſe, although the new leaſe be for a leſs term, or by *parol*, when the firſt leaſe was by indenture, and although the new leaſe be with a defeazance, upon a condition ſubſequent performed, or to commence at a future day. Dyer 251. 2 Roll. Abr. 497. 1 Leon. 177. Plowd. 106. Dyer 140. 5 Co. 11. Cro. El. 522. Cro. Jac. 84. 5 Com. Dig. 513.

12. A leaſe made by the leſſor to the leſſee, from year to year during their mutual pleaſure, is, after entry made, not only a leaſe for that year but from *year to year* until *half a year's warning* be given by one of the parties to the other of quitting the farm; and if the tenant in ſuch caſe die inteſtate his adminiſtrator has the ſame intereſt in the land which his inteſtate had. 6 Co. 35. 2 Roll. Abr. 851. 3 Bac. Abr. 432. 2 Salk. 413. 3 Term Rep. 13.

13. A leaſe can only be made void by the leſſor, and that is, by *his entry*. It may be made voidable by the *laches* of the leſſee, in not paying his rent according to the covenants therein; but if the leſſor afterward accept the rent, that which was before voidable becomes a good leaſe by ſuch acceptance.

14. A leſſor of lands, tenements, *&c.* for a term of years may maintain an action of *debt* for rent againſt the executor or adminiſtrator of his leſſee, after aſſignment 3 Co. 23. Cro. El. 555. 2 Com. Dig. 641, 642.

(*a*) By 29 Car. 2. c. 3. No *leaſe*, eſtate, or intereſt of freehold or term of years, or any uncertain intereſt, not being copyhold, in or out of any manors, lands, &c. ſhall be *ſurrendered* unleſs by *deed* or note in *writing* ſigned by the party ſo ſurrendering, or his agent thereto authoriſed *in writing*, or by act and operation of law. 5 Com Dig. 510.

made by him of ſuch leaſe; for the aſſignment is not good till notice thereof to, and aſſent by, the leſſor; as by accepting the arrears of rent. AND NOTE: If no arrears be due, no notice is neceſſary.

Co. Lit. 310. 1 Lev. 22. 2 Com. Dig. 640.

15. If a leſſor grant a term at a reſerved rent, and afterward aſſign ſuch rent, and the leſſee *attorn tenant* (*a*) to ſuch aſſignee, he may maintain a *diſtreſs* or an action of *debt* againſt the leſſee for the rent reſerved, when in arrear.

Co. Lit. 4. 3 Co. 2. 2 Bl. Com. 17.

16. Under the name of *land*, are underſtood not only gardens, meadows, paſtures, rivers, woods, moors, *waters*, marſhes, furze, heath, but meſſuages, houſes, tofts, mills, caſtles, and other buildings; for they conſiſt of two things; *land* which is the foundation, and *ſtructure* thereupon; and therefore by the name of *land*, which is *nomen generaliſſimum* every thing terreſtrial will paſs.

Co Lit. 55. 2 Bl. Com. 145.

17. If a perſon let lands, *&c. at will*, and afterward do any act inconſiſtent with ſuch letting, the leſſee may avail himſelf thereof to determine ſuch holding; thus if a leſſor declare that the leſſee ſhall hold the premiſes no longer, the leſſee, on knowledge and proof of theſe words, may deliver up poſſeſſion of the premiſes to the leſſor.

2 Bl. Com. 324.

18. A leaſe for a year, reſerving a *pepper-corn* only, is held to operate as *a bargain and ſale*, and makes the leſſee capable of taking *a releaſe* according to the tenure of the grant.

19. A leaſe for *ninety-nine years*, to hold "if two perſons ſo long live," without ſaying, "*or either of them*," will determine on the death of either.

20. A leaſe although it be ſealed and delivered by the leſſor only, and not by the leſſee, yet it is good, and will operate againſt the leſſor; for he has thereby completed his part of the contract.

21. Where a leaſe for lands has an *exception* of a cloſe or wood, if a paſſage thro' the ſame be abſolutely neceſſary

(*a*) By 4 & 5 Ann c. 16. All grants and conveyances of any manors or *rents*, or of the reverſion or remainder of any meſſuages or lands ſhall be good without *attornment* of *the tenants*; provided that no ſuch tenant ſhall be damaged by *payment of rent* to any ſuch grantee or conuſor, or by breach of any condition for non-payment of rent before notice given him of ſuch grant by the conuſee or grantor: And by 11 Geo. 2. c. 19. the attornments of tenants to ſtrangers claiming title to the eſtate of their *landlord* ſhall be abſolutely null and void to all intents and purpoſes whatſoever, and the poſſeſſion of their reſpective landlord or leſſor, ſhall not be changed or affected by ſuch attornment; but that ſhall not affect the validity of any attornment made in conſequence of ſome judgment at law or donee in equity, or made with the privity or conſent of the landlord or leſſor, or to any MORTGAGEE after the mortgage has become forfeited. Hargrave's Co. Lit. p. 309. a.

for the tenant to come at the demiſed premiſes, the law gives him a right of paſſage through the ſame, notwithſtanding ſuch exception.

22. Where a tenant for life, or years, removes his goods out of the houſe or lands, and the leſſor enters therein, this is no ſurrender of the leſſee; but if he continue therein after demand made of the ſaid premiſes by the leſſee, an action of *treſpaſs* will lie for ſuch *illegal* entry. Stra. 727.

23. If a man make a leaſe to another without any conſideration, the leſſee may ſeize to his own uſe; or if he make a leaſe to another, and to *his heirs* for any given term, intending that if the leſſee die within that term, his heirs ſhould, in that caſe, enjoy the premiſes during that term, this demiſe is void; for if the leſſee die, his *executors*, and not his *heirs*, ſhall enjoy the term; for by the eſtabliſhed laws of the land, *all chattels* devolve to the *executor*, and not to the *heir*.

24. By a demiſe of "a houſe with the appurtenances," the orchard, gardens, yards, ſhops, and curtilage paſs, but not *land*; for land, unleſs it be occupied with a houſe is not conſidered as properly appurtenant thereto; but if ſuch demiſe have the words "*with all lands* thereunto belonging," the lands uſed therewith will paſs. Cro. Jac. 526. Plowd. 170. Cro. Car. 17. 57. 3 Com. Dig. 443.

25. If a man make a leaſe for a longer term than he has therein, a court of *equity* will eſtabliſh ſuch leaſe for his term. 2 Lev. 142. 2 Term Rep. 171.

26. On a leaſe aſſigned to another, if the leſſor accept rent of the aſſignee, it is a ſufficient notice to him of the aſſignment, and he cannot afterward reſort back to the firſt leſſee for the rent. *Quære.* 3 Lev. 295. 4 Mod. 71. 2 Com. Dig. 565.

27. In a leaſe of a houſe, if the leſſor except "*two rooms and free paſſage thereto*," and the leſſee aſſign ſuch leaſe, if the aſſignee diſturb the leſſor in ſuch right of paſſage, an action of *covenant* lies for ſuch diſturbance; but if the diſturbance had been in the *rooms* excepted, no action of covenant would have lain, becauſe they were not demiſed; for where a leſſee agrees to let the leſſor have any thing out of *a demiſe*, as a way, common, *&c.* he has his redreſs by action of covenant. Cole's Caſe 1 Salk. 196.

28. If the leſſee of a term put up any thing in a houſe for the convenience of his buſineſs, he may remove the ſame at any time during the term; but what he does in beautifying the premiſes, he cannot remove; the general rule be- See the caſe of Fitzherbert v. Shaw. 1 Term Rep. C. B. 258.

ing, that whatever is *fixed* on or to the freehold becomes part thereof, and reverts to the leſſor.

3 Com. Dig. 443. 29. If a man let a parcel of land by the deſcription of "all his meadow land in *C.* containing *twenty acres*," yet if the ſame ſhould be *forty acres*, it will paſs by this demiſe.

30. Demiſes of lands, *&c.* to take effect "from the day of the date," do not commence until the next day after the deed bears date; but if it be "*to have and to hold from the date*," or "*from the making of the indenture*," in either of theſe caſes, it operates immediately. A leaſe to hold "*from henceforth*" ſhall be computed from the day of the delivery; and "*from the making*" ſhall be taken *incluſive* of the day of the making; for the day of delivery is *incluſive*, and is conſidered as the firſt day of the term: if it be made "*To hold* from the day of the date, or "*the day of making*," then the day of the date or making ſhall be *excluſive*; but it is otherwiſe if *To hold* from the date and it be delivered on the ſame day: And when a leaſe is made to commence from a day to come that day is excluded. If an *habendum* of a leaſe be for a term of *twenty-one years*, without mentioning when the ſame is to commence, it ſhall be held to begin from the delivery; or if a leaſe bear date on a day impoſſible, if the ſame be limited to begin from the date thereof, it ſhall take effect and commence from the delivery of ſuch leaſe as if there were no date thereto. If a man make a leaſe to another for *twenty-one years*, and afterward make another leaſe to him, to commence from "the expiration of the firſt term," if the firſt leaſe be ſurrendered, the ſecond ſhall immediately commence; but it would have been otherwiſe if it had been to commence from "the end of the ſaid *twenty-one years*;" for in that caſe although there had been a ſurrender, yet ſuch ſecond leaſe would not have commenced till the firſt term had expired, becauſe the law makes a diſtinction between a *term* and *time* of years.

1 Wilſ. 176. 2 Wilſ. 165.

Co. Lit. 46. b.

Co. Lit. 45. b.

31. Where leaſes are made for a certain number of years, "if two or more perſons ſo long live," this term ceaſes on the death of all the leſſees.

32. A leaſe for years does not by the words "*demiſe, grant, and to farm let*," empower the leſſee to bring an action of *treſpaſs*, until he has taken actual poſſeſſion thereof; but the words, "*bargain and ſell*," when for a pecuniary conſideration, though ever ſo ſmall, give the party immediate

diate poſſeſſion as ſoon as the deed is executed, and enables him to bring the above action. *(a)*

33. On letting lands where there are mines underneath or trees thereon, the leſſor cannot enter to take the ſame without being guilty of a treſpaſs, unleſs he reſerve to himſelf ſuch a privilege on the demiſe; but if he enter grounds demiſed by him to another, he is no treſpaſſer; for the law will preſume that he entered to ſee if waſte was done. 5 Com. Dig. 576.

34. The loſs of a leaſe does not affect the term demiſed thereby, if the leſſee can prove ſuch term is ſtill ſubſiſting and undetermined. 3 Term Rep. 151.

35. A leaſe or deed may be dated as far back as the parties pleaſe before it is ſealed, but it cannot be dated forwards.

36. The foundation of deeds ought to be good and honeſt, and not to perfect any unlawful contract; and therefore by 27 *Eliz. c.* 4. All conveyances, grants, *&c.* made of lands or tenements to defraud any purchaſer of the ſame for a valuable conſideration, as againſt ſuch purchaſer, and every other perſon lawfully claiming under him, ſhall be void.

37. All *deeds*, *gifts*, *grants* and *leaſes*, made by a man while under *dureſs of impriſonment* are voidable, not only by the party making the ſame, but by his heirs, and thoſe who derive their eſtates from him: And perſons unable to read are not compellable to do any act or deed without having a proper perſon with them, who can read and explain the ſame; yet if they do ſuch act it will bind them. 2 Bl. Com. 292.

38. A tenant at *will* of lands, if his term be out, or he be *ouſted* thereof, if he ſow ſuch lands, ſhall notwithſtanding have liberty to reap and carry away his corn; but if he be tenant on a *leaſe for years*, he ſhall not have ſuch privilege, becauſe he knew when his leaſe would determine, *(b)* and did it at his peril, unleſs ſuch leaſe contains a covenant, that the leſſee ſhall have his *way-going crop*; the doctrine is, that a tenant at *will*, or his executors, ſhall be entitled only to ſuch things on the land as bring a yearly profit:—But a *cuſtom* that a tenant may leave his *way-going* 2 Bl. Com. 145, 146. *(b)* Vide ante p. 6. ſ. 9.

(a) The reaſon of this is that a *bargain and ſale* raiſes *a uſe* by implication in the bargainee, and then the ſtatute of uſes 27 Hen 8. c. 10. immediately *executes* the uſe, that is, it conveys the *poſſeſſion* to the *uſe*, and transfers the *uſe* into the *poſſeſſion*. 2 Black. Com 333; or as it is better expreſſed, the bargain firſt veſts the uſe, and then the ſtatute veſts the poſſeſſion. Cro. Jac. 696.

crop

crop in the barns or on the lands of the farm for a certain time after the leaſe is expired and he has quitted the premiſſes, is good; and the landlord may diſtrain the corn ſo left for rent arrear after *ſix months have expired* from the determination of the term (*a*). If a man ſeiſed of land in right of his wife, ſow the ſame, and die, his executor ſhall be entitled to the corn growing thereon; but if he and his wife had been joint-tenants of ſuch land, the wife, on his death, would have been entitled to the corn by ſurvivorſhip. And although a leaſe made by a huſband of the wife's lands in his own name only, is void after his death; yet notwithſtanding the leaſe is void, the leſſee ſhall have the corn ſown on ſuch lands.

(*a*) Bevan *v.* Delahay. 1 Term Rep. in Com. Pleas, p. 5. Trinity Term 28 Geo. 3.

1 Bl. Rep. 351. 39. The aſſignee of a leaſe, aſſigned after the covenant broken by leſſor, is not liable for the breach.

1 Bl. Rep. 596. 40. A month's notice is not ſufficient to quit under a leaſe from year to year, but *quere* if the party die, whether it is not ſufficient for the executor.

2 Bl. Rep. 766. 41. A covenant not to aſſign, ſet over, or otherwiſe do or put away the leaſe or demiſed premiſes, does not extend to an under-leaſe for part of the term.

2 Bl. Rep. 840. 42. In action againſt a tenant for not performing his agreements, the eſtate of the leſſor (whether truly averred or not) is immaterial, if the tenant had the benefit of his leaſe.

Ibid. 43. An agreement to leave a farm as found, means to leave it in tenantable repair, if ſo found.

3 Bl. Rep. 973. 44. An *agreement* to grant a leaſe "and leſſor did thereby ſet and let" for twenty-one years from a *future* day, is a *preſent* leaſe, if ſo intended by the parties.

2 Bl. Rep. 1171. 45. A general *parol demiſe*, at an annual rent, where the greateſt part of the farm is incloſed, and a ſmall part of it in common fields, is only a leaſe from year to year, and not for ſo long as the uſual round of huſbandry extends.

2 Bl. Rep. 1224. 46. Agreement to take a farm, the ARABLE LANDS from *Old Candlemas*, the PASTURE from *Old Lady-day*, the MEADOW from *Old May-day*, is a taking of the whole from *Lady-day*; and notice to quit before *Michaelmas*, is ſufficient.

Dougl. 50, 54. Cowp. 482. 47. A leaſe void in its creation as againſt a remainderman, does not become valid by his accepting rent, or ſuffering the leſſee to make improvements after his remainder veſts in poſſeſſion, and if the leaſe be only voidable, yet, acceptance of rent is not, of itſelf, a confirmation, but *quære* whether equity would not relieve in ſuch a caſe.

48. A

48. A leaſe by the huſband of a *feme covert's* eſtate, Dougl. 53.
though not within the ſtat. 32 *Hen.* 8. *c.* 28. is only void-
able; but a mortgage of a *feme covert's* eſtate, though in
form of a leaſe, is void.

49. Under a *proviſo* that all aſſignments of a leaſe ſhall Dougl. 56.
be void if not enrolled, under-leaſes are not included.

50. Where a leaſe is *ipſo facto* void by the condition or Dougl. 58.
limitation, no acceptance of rent afterwards, can make it
have continuance, as between the grantor and the grantee;
otherwiſe it is of a leaſe voidable only.

51. An *under-leaſe* is not an *aſſignment*, to the effect of Dougl. 57. 284.
working a forfeiture under a *proviſo* not to aſſign.

52. When the whole term is made over by the leſſee, Dougl. 187.
although, in the deed by which this is done, the rent and
a power of entry for non-payment thereof, be reſerved to
him, and not to the original leſſor, this is an *aſſignment*
and not an *under-leaſe*; and in ſuch caſe, the original leſ-
ſor, or his aſſignee of the reverſion, may ſue or be ſued, on
the reſpective covenants in the original leaſe, and this al-
though new covenants are introduced in the aſſignment.

53. What cannot be ſupported as *an aſſignment*, ſhall be Dougl. 188.
good as *an under-leaſe* againſt the party granting it.

54. Mortgagee after giving notice of the mortgage, to Dougl. 279.
the tenant in poſſeſſion under a leaſe prior to the mortgage,
is intitled to the rent in arrear at the time of the notice, as
well as to what accrues afterwards, and he may diſtrain for
it, after ſuch notice.

55. A leaſe to commence "from the day of the date" is Cowp. 714.
good under a power to grant leaſes in *poſſeſſion* only, and Dougl. 53.
not in *reverſion*.

56. Though tenant for life, with power to grant leaſes Dougl. 292.
in poſſeſſion for twenty-one years, convey his life eſtate to
pay an annuity for his life, and the overplus to himſelf, he
may ſtill grant leaſes agreeable to the terms of the power.

57. Where tenant for life has a power to grant leaſes, in Earl Ferrers v. Funican.
poſſeſſion, but not by way of reverſion, or future intereſt, Dougl. 565.
a leaſe *per verba de præſenti*, is not contrary to the power,
though the eſtate, at the time of making the leaſe, was held
by tenants at will, or from year to year, if, at the time,
they received directions, from the grantor of the leaſe, to
pay their rent to the leſſee.

58. Under a power to leaſe all manors, meſſuages, lands, Dougl. 566.
&c. ſo as there be reſerved as much rent as is now paid for Sed vide infra
the f. 72.

the ſame; ſuch parts of the eſtates enumerated in the power, never to have been demiſed, may be let.

Dougl. 574. 59. But, in a family ſettlement of an eſtate conſiſting of ſome ground always occupied with the family ſeat, and of lands let to tenants upon rents reſerved, the qualification annexed to the power of leaſing, *viz.* that the ancient rent muſt be reſerved, excludes the manſion houſe and lands about it never let.

Cowp. 595. 60. No man has a term of 2000 years, as a leaſe, but to attend the inheritance.

Loft 276. 61. A leaſe from the firſt of *June* for three years, begins on the *ſecond*, and ends on the *firſt*.

Ludford *v.* Barber. 1 Term Rep. 86. 62. A leaſe executed by the tenant for life, (in which the reverſioner, who was then under age, is named as a party, but not executed by him) is void on the death of the tenant for life, *&c.* and an execution of it afterwards by the reverſioner only, is no confirmation of it, ſo as to bind the leſſee in an action of covenant.

Raberry *v.* Jervoiſe. 1 Term Rep. 229. 63. Under a covenant in a leaſe for ſixty-one years, "That at any time within one year after expiration of twenty years of the term, the leſſor would execute another leaſe of ſaid premiſes unto the leſſee for a further term of twenty years, to commence from the expiration of the ſaid term of ſixty-one years," the leſſor cannot claim a further term of twenty years, at the expiration of the laſt term of twenty years in the leaſe, if he have omitted to claim a further term at the end of the firſt and ſecond twenty years in the leaſe.

Smith *v.* Mapleback, Mich. Term 27 Geo. 3. 1 Term Rep. 441. 64. Where a leaſe came into the hands of the original leſſor, by an agreement between him and the original leſſee, "that the leſſor ſhould have the premiſſes as mentioned in the leaſe, and ſhould pay a particular ſum over and above the rent, annually, towards the good-will already paid by ſuch aſſignee," ſuch an agreement operates as a ſurrender of the whole term: And the ſum in the agreement is conſidered as a ſum to be paid annually in groſs, not as rent; and the aſſignee cannot *diſtrain* either for that or for the original rent: But he has a remedy by *aſſumpſit* for the ſum reſerved for the good-will.

Doe on the demiſe of Freeland *v.* Buſt, Hafter Term Geo. 3. 1 Term Rep. 701. 65. A demiſe of premiſes in *Weſtminſter*, late in the *occupation of A.* particularly deſcribing them, part of which was *a yard*, does not paſs *a cellar* under that *yard*, which was then in the *occupation of B.* another tenant of the leſſor.

66. Under

66. Under a power to a tenant for life to grant leaſes for years, provided he reſerve the *uſual* covenants; if he make a leaſe containing a proviſo that in caſe the premiſſes be blown down or burned, the leſſor ſhould build, otherwiſe the rent ſhould ceaſe, and the jury find that ſuch covenant is *unuſual*, the leaſe is void. Doe on the demiſe of Ellis *v.* Sandham, Eaſter 27 Geo. 3. 1 Term Rep. 705.

67. A leſſee who covenants to pay rent, and to repair, with an exception of caſualties by fire, is liable upon the covenant for rent, though the premiſſes be burned down, and not rebuilt by the leſſor after notice. Belfour *v.* Weſton, 1 Term Rep. 310.

68. A paper, containing words of preſent contract, with an agreement that the leſſee ſhould take poſſeſſion immediately, and that a leaſe ſhould be executed in future, operates only as *an agreement for a leaſe*, and therefore, if executed before the paſſing of the 23 *Geo.* 3. *c.* 58. it need not be ſtamped. Goodtitle on the demiſe of Eſtwick *v.* Way, Eaſter, 27 Geo. 3. 1 Term Rep. 735.

69. Under *a grant* of "a free and convenient way" for the purpoſe (amongſt other things) of carrying coals the grantee has a right to lay a ſecond waggon way, but under a grant of a way "from *A.* to *B. in, through* and "*along*" a particular way, the grantee is not juſtified in making a tranſverſe road *acroſs* the ſame. Senhouſe *v.* Chriſtian, 1 Term Rep. 560

70. A proviſo in a leaſe for twenty-one years, that the landlord ſhall re-enter on the tenant committing an act of bankruptcy, is good. Roe *v.* Galliers, Mich. Term, 28 Geo. 3. 2 Term Rep. 133.

71. When an *infant* becomes intitled to the reverſion of an eſtate, leaſed from year to year, he cannot eject the tenant without giving the ſame notice as the original leſſor muſt have given. Maddox *v.* White. Mich. Term 28 Geo. 3. 2 Term Rep. 159.

72. If a leaſe contain a proviſo that the leſſee, his executors, adminiſtrators and aſſigns ſhall not *ſet*, *let*, or *aſſign* over the whole or part of the premiſſes without leave in *writing*, on pain of forfeiting the leaſe, the adminiſtratrix of the leſſee cannot underlet without incurring a forfeiture, though for a leſs time than the whole term; and a *parol* licence to let the premiſſes will not diſcharge the leſſee from the reſtriction of ſuch a proviſo; nor will the leſſor's receiving rent after ſuch forfeiture be any *waiver* thereof, unleſs the forfeiture were known to him at the time he received it. Roe on the demiſe of Gregſon widow *v.* Harriſon, Eaſter Term, 28 Geo. 3. 2 Term Rep. 425.

73. If a tenant hold under an agreement for a leaſe at a yearly rent, whereby it is ſtipulated that the agreement ſhall continue for the life of the leſſor, and that a clauſe ſhall be inſerted in the leaſe giving the leſſor's ſon power to take the houſe Doe on the demiſe of Bromfield *v.* Smith. Eaſter, 28 Geo. 3. 3 Term Rep. 436.

houſe for himſelf when he came of age, the ſon muſt make his election in a *reaſonable time* after he comes of age; the delay of *a year* is unreaſonable, and the tenant cannot be ejected upon half a year's notice to quit, ſerved after ſuch a delay; but if he had elected within *a week* or *a fortnight*, that certainly would have been reaſonable.

Buckley aſſignee of Buckley *v.* Taylor. Trinity Term, 28 Geo. 3. 2 Term Rep. 600.

74. If a trader, after committing an act of bankruptcy, take a houſe, and agree to pay half a year's rent in advance, where by the cuſtom of the country half a year's rent becomes due on the day on which the tenant enters, the landlord, after an aſſignment under the commiſſion, and before the year expires, may *diſtrain* the goods on the premiſſes for half a year's rent, or, if he buy the tenant's goods at the ſale under the commiſſion, he may retain the amount of the year's rent.

Doe *v.* Clare. Mich. Term 29 Geo. 3. 2 Term Rep. 739.

75. An inſtrument on an agreement ſtampt, reciting that *A.* in caſe he ſhould be intitled to certain copyhold premiſſes on the death of *B.* would immediately demiſe the ſame to *C.* declaring that "*he did thereby* AGREE *to demiſe* "*and let the ſame*," with a ſubſequent covenant to procure a licence to let from the lord, operates as *an agreement* for a leaſe, and not as an *abſolute demiſe*.

Webb *v.* Ruſſell. Trinity Term 29 Geo. 3. 3 Term Rep. 393.

Stokes *v.* Ruſſel. Trinity 30 Geo. 3. 3 Term Rep. 678.

76. If a mortgagor and mortgagee make a leaſe, in which the covenants for the rent and repairs are only with the mortgagor and his aſſigns, the aſſignee of the mortgagee cannot maintain an action for the breach of theſe covenants, becauſe they are collateral to his grantor's intereſt in the land, and therefore do not run with it; but the mortgagor himſelf may.

Webb *v.* Ruſſel. 3 Term Rep. 393.

77. If a tenant for a term of years leaſe for a leſs term, and aſſign his reverſion, and the aſſignee take a conveyance of the fee by which his former reverſionary intereſt is merged, the covenants incident to that reverſionary intereſt are merged.

Ibid.

78. By 32 *Hen.* 8. *c.* 34. the *grantees* of reverſions have the ſame remedy againſt their leſſees, their executors, *&c.* as their *grantors* had.

Southall *v.* Leadbeater. Mich. Term. 30 Geo. 3. 3 Term Rep. 458.

79. A leſſee for twenty-one years, at *a pepper corn rent* for the firſt half year, and *a rack rent* for the reſt of the term, who by agreement was to put the premiſſes in repair, and covenanted to pay the land-tax, and all other taxes, rates and *impoſitions*, having aſſigned his term for a ſmall ſum in groſs, is not liable to pay the expence of a party wall, either by the proviſions of the 14 *Geo.* 3. *c.* 48. § 41.

or

or by the covenant; but that charge muſt, in ſuch caſe, be borne by the original landlord; for the ſtatute intended to throw that burthen on perſons to whom long leaſes had been granted, with a view to an *improvement of the eſtate*, and who afterwards *underlet* at a conſiderable *increaſe of rent*: If the leſſee of ſuch a term had afterwards ſold *the leaſe for a ſum in groſs*, he would alſo be liable within the ſtatute.

80. A leaſe made in 1785 for three, ſix, or nine years, determinable in the years 1788, 1791, and 1794, is a leaſe for nine years, determinable at the end of three or ſix years by either of the parties, on giving reaſonable notice to quit. Goodright v. Richardſon. Mich. 30 Geo. 3. 3 Term Rep. 463.

81. Under a covenant in a building leaſe by the tenant to pay all the taxes except the *land-tax*, the landlord is only to pay the *old land-tax*, and not the *additional land-tax* occaſioned by the improvement of the eſtate. Hyde v. Hill. 3 Term Rep. 377.

82. Under the ſettlement of an eſtate, with a power to the tenant in poſſeſſion to let *all or any part* of the premiſſes, *ſo as* the uſual rents be reſerved, A LEASE *of tithes*, they not having been let before, is void. Pomeroy v. Partington. Trin. 30 Geo. 3. 3 Term Rep. 665.

PRECEDENTS OF AGREEMENTS. (*a*.)

83. MEMORANDUM made this day of 1791, between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows:—The ſaid *A. B.* doth let unto the ſaid *C. D.* the rooms and apartments following, *viz.*—An entire firſt floor, the fore kitchen and cellar under it, and a fore garret, being part of the houſe, which he the ſaid *A. B.* now lives in, ſituate and being in TO HAVE AND TO HOLD the ſaid premiſſes for and during the term of half a year, to commence from *Midſummer Day* next, after the date hereof, at and for the yearly rent of pounds of lawful money of *Great Britain* payable quarterly, by even and equal portions, the firſt quarterly payment to be

An agreement for letting an apartment. N. B. This agreement muſt be on a *ſix ſhilling ſtamp*.

(*a*) By 23 Geo. 3. c. 58. All agreements muſt be impreſſed with a *ſix ſhilling* STAMP within twenty-one days from their date, EXCEPT—Agreements for leaſes at rack rent under the yearly value of five pounds:—Agreements for the hire of labourers, artificers, manufacturers, or menial ſervants:—Agreements for the ſale of goods, wares or merchandize:—Agreements whereof the matter ſhall not exceed twenty pounds:—And agreements made in Scotland and ſtamped with the duty required on deeds there.

made

made on *Michaelmas Day* next enſuing the date hereof: AND IT IS FURTHER AGREED by and between the parties hereto, that the ſaid *C. D.* after the expiration of the ſaid half year, may hold and enjoy the ſaid premiſſes from quarter to quarter, ſo long as both parties ſhall agree, at the rent of pounds for every quarter, and each party is at liberty to give a quarter's warning for the quitting poſſeſſion of the ſaid premiſſes, AND IT IS ALSO FURTHER AGREED, between the ſaid parties, that when the ſaid *C. D.* ſhall leave the ſaid premiſſes he ſhall leave the glaſs windows and other things belonging to the ſaid premiſſes in as good condition as they now are (reaſonable wear only excepted.) *As witneſs.*

An agreement for letting a houſe—
N. B. This agreement muſt alſo be on a *ſix ſhilling ſtamp.*

83. MEMORANDUM made the day of 1791; between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.* The ſaid *A. B. doth* hereby demiſe and let unto the ſaid *C. D.* a houſe and garden with the appurtenances, ſituate in in the county of late in the poſſeſſion of *E. F.* and now of for the term of *three years* certain, and a quarter's warning or notice to be given or left in writing by either of the ſaid parties, to or for the other of them, at the end of the ſaid *three years.* The rent thereof to commence from *Lady-day* next, at and under the yearly rent of payable quarterly; the firſt payment thereof to begin and be made at *Midſummer-day* next. AND THE ſaid *C. D. doth* agree to take the ſaid houſe of the ſaid *A. B.* for the term, and at the ſaid rent payable in manner aforeſaid; AND ALSO that he will at his own coſts and charges make good, or cauſe to be made good, and put into the ſame or as good condition and order as the ſame lately was in, the kitchen, or ground-room of or belonging to the ſaid houſe, which he has now converted or cauſed to be converted into a cheeſe-monger's ſhop, at the expiration or other ſooner determination of this preſent demiſe; AND ALSO will then leave on the ſaid premiſes, for the uſe of the landlord, the paper hangings in the chambers, the back window-ſhutters, the ſtone-hearth, two ſhelves in the cloſet, one ſhelf in the kitchen, and another ſhelf in the waſh-houſe of and belonging to the ſaid houſe, AS WITNESS, *&c.*

84. MEMORANDUM made the day of 1791, between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.* —The said *A. B.* in consideration of the rent herein after-mentioned and agreed to be paid to him, *hath* demised, and hereby *doth* demise, and let unto the said *C. D.* a messuage or tenement, situate, and being in *court*, in the parish of , in the county of *M.* TO HOLD to the said *C. D.* for the term of *one year*, to commence from *Christmas-day* next, at the yearly rent of pounds, to be paid quarterly; *and* the said *A. B.* doth hereby agree by or before *Christmas-day* next, well and sufficiently to repair, amend, and put in good and tenantable order and condition, the said house with its appurtenances, in all needful and necessary reparations and amendments whatsoever; in in case the same is not already in such good and sufficient repair and condition, and the same premises so to continue and keep in such repair from thenceforth, for and during all such time as the said *C. D.* shall be and continue therein as tenant at will only. *The* said *C. D.* in consideration thereof doth hereby agree to take and rent the said house of the said *A. B.* for the term, and at the rent, payable as aforesaid, which said rent she agrees to pay unto him quarterly. AND it is hereby mutually agreed between the said parties, that after the expiration of the said term of a year, if either of them shall be minded or desirous to quit, leave, or part with each other, or from the said premises, she or he shall give one quarter's warning or notice in writing thereof to the other of them. AND if after the said term of a year be expired, she the said *C. D.* shall be minded or desirous to have and take a lease of the said premises with the common and usual covenants, for a further term of *three* or *seven* years at pounds a year, payable quarterly, and, of such her intention and desire, shall give notice, in writing, to the said *A. B.* within *three months* after the expiration of the said term of a year, that then he the said *A. B.* shall and will grant her such lease for such further term or terms, and at such rent, and payable as aforesaid, the costs and charges of such lease (if demanded by the said *C. D.*) to be paid and discharged equally, by and between the said parties, *As witness*, *&c.*

Witness,

An agreement for letting a house; with a covenant for a lease at the option of the lessee.

N. B. This agreement must be on a *six shillings* stamp.

An agreement to grant a leaſe of a houſe.

N. B. This agreement muſt be on a *ſix ſhillings* ſtamp.

85. MEMORANDUM made this day of 1791, between *A. B.* of, *&c.* of the one part and *C. D.* of the other part as follows, *viz.*—FIRST the ſaid *A. B. doth* hereby agree at his own coſts, with all convenient ſpeed to execute unto the ſaid *C. D.* a leaſe of ALL that meſſuage late in the poſſeſſion of *E. D.* ſituate in , with the appurtenances, *to hold* to him the ſaid *C. D.* his executors and aſſigns, from *Midſummer-day* now next enſuing, for the term of years, at and under the annual rent of pounds, payable quarterly, free of taxes (*except the land-tax*;) which leaſe ſhall contain all the uſual and reaſonable covenants, and particularly certain covenants that the ſaid *A. B.* ſhall allow out of the *firſt year's rent of* the ſaid premiſes the ſum of pounds, towards the repairs thereof, and that he ſhall alſo pay all the taxes in reſpect of the ſaid houſe to *Midſummer-day* next; and ſhall alſo indemnify the ſaid *C. D.* and his aſſigns from the ground-rent thereof, during the ſaid term; and that there ſhall alſo be inſerted in the ſaid leaſe, an exception againſt damages happening by fire, to the ſaid premiſes, during the ſaid term, in conſideration whereof the ſaid *C. D. doth* hereby agree to accept ſuch leaſe, and to execute a counterpart thereof, when tendered to him for that purpoſe. *As witneſs, &c.*

Witneſs,

An agreement for a leaſe of a garden-ground.

N. B. This agreement muſt be on a *ſix ſhillings* ſtamp.

86. MEMORANDUM made this day of 1791, between *H. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*—The ſaid *H. B.* in conſideration of the rent and agreements herein after-mentioned, *doth* agree to demiſe, and let by a good and ſufficient leaſe in the law thereof unto the ſaid *C. D.* ALL that field with the appurtenances thereunto belonging, ſituate at or near adjoining to, *&c.* late in the occupation of *E. F.* a gardener, together with all ways, paths, paſſages, waters, watercourſes, eaſements, privileges and appurtenances whatſoever, to the ſame belonging or appertaining, or therewith held, uſed, occupied, poſſeſſed, enjoyed, or accepted, reputed, taken or known as part, parcel, or member thereof, or of any part thereof, *To hold* the ſame for the term of years, from *Chriſtmas-day* laſt paſt, at and under the yearly rent of pounds, payable quarterly, the firſt payment thereof to be made at *Lady-day* next enſuing the date thereof. AND the ſaid *C. D.* is

D. is to have full and free liberty to lop and top the trees and hedges of the ſaid premiſes, at ſeaſonable and convenient times, and to plough up and erect upon the ſame any ſhed or ſheds, or other convenient buildings during the ſaid term, he from time to time ſcouring and cleanſing the ditches, and repairing and making good the fences, hedges, and gates thereof. AND the ſaid *C. D.* in conſideration thereof *doth* agree to take the aforeſaid premiſſes for the ſaid term, and at the ſaid rent, payable in manner aforeſaid, and to execute a counterpart of the aforeſaid leaſe; *and alſo* to ſcour, and cleanſe the ditches, and repair, make good, and keep up the fences, hedges, and gates of the ſaid premiſes, *As witneſs, &c.*

Witneſs,

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87. MEMORANDUM made this day of 1791, between *H. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*—The ſaid *H. B. doth* hereby agree by good and ſufficient conveyances in the law, at or before *Chriſtmas-day* next, to aſſign, ſell, and convey unto the ſaid *C. D.* his heirs and aſſigns, free from all incumbrances whatſoever and howſoever; ALL thoſe three houſes, yards and appurtenances, together with all and every the gates, locks and fixtures, therein and thereon, ſituate in in the pariſh of *London*; AND ALSO a piece of ground near thereto adjoining, in the poſſeſſion of *E. F.* eſq; *to hold* unto her the ſaid *C. D.* her heirs and aſſigns for ever, at and for the price or ſum of pounds, of lawful money, *&c.* to be paid unto him by her, on a ſufficient title being made out and executed unto her by him: *And alſo* to aſſign over unto her the ſeveral policies of inſurances of the ſaid houſes, and to clear, pay, and diſcharge all taxes, charges, incumbrances, and impoſitions charged, or aſſeſſed on the ſaid premiſſes, unto *Chriſtmas-day* aforeſaid, and to indemnify her, or reimburſe her on account thereof,

AND the ſaid *C. D.* on her having by the conveyances aforeſaid, the ſaid premiſſes aſſigned and conveyed unto her, at or by the time aforeſaid, and in manner aforeſaid, *doth* hereby agree to pay unto the ſaid *H. B.* the price or ſum aforeſaid, for the ſame, and has now paid unto the ſaid *H. B.* the ſum of pounds, in part of the purchaſe-money aforeſaid. *As witneſs, &c.*

An agreement for the purchaſe of a houſe and premiſes.

N. B. This agreement muſt be on a *ſix ſhillings* ſtamp.

(*a*) Note: Let there be a receipt for the money paid in part of the purchaſe.

An agreement for building a houſe.

N. B. This agreement muſt be on a *ſix ſhillings* ſtamp.

88. MEMORANDUM made this day of 1791, between *H. B.* of, *&c.* of the one part, and *C. D.* of the other part, as follows:—The ſaid *C. D.* for the conſideration herein after-mentioned, *doth* agree with the ſaid *H. B.* that he the ſaid *C. D.* or his aſſigns, will within the ſpace of *three calendar months* next following the day of the date of theſe preſents, find and provide all fit and proper materials and things, and erect, build, and finiſh, in a good, ſound, ſubſtantial, and workman-like manner, one brick-houſe or building, on a piece or parcel of waſte ground ſituate, *&c.* according to a plan thereof hereunto annexed, and of the dimenſions following, *viz.* *(here inſert the dimenſions of the building, and ſcantlings of the timber intended to be uſed in the building thereof)* AND the ſaid *H. B.* for the conſiderations aforeſaid, *doth* agree with the ſaid *C. D.* well and truly to pay, or cauſe to be paid, unto the ſaid *C. D.* the ſum of pounds, of lawful money of *Great Britain*, in manner following, that is to ſay pounds part thereof as ſoon as the foundation of the ſaid houſe ſhall be laid, pounds other part thereof when the brick-work of the ſaid houſe ſhall be carried up and tiled in, and the remaining pounds, being in full payment of and for building the ſaid houſe, when the ſame ſhall be completed, inſide and out, fit for occupation, *ſubject* to the approbation of *E. F.* ſurveyor to the ſaid *H. B.* AND LASTLY, the ſaid *H. B.* and *C. D.* *do* further agree by theſe preſents, to execute to each other, with all convenient ſpeed, an article of agreement in the penalty of pounds, for the true performance of all and every the matters and things aforeſaid, *As witneſs, &c.*

Witneſs,

An agreement for letting a ready furniſhed lodging.

N. B. This agreement muſt be on a *ſix ſhillings* ſtamp.

89. MEMORANDUM made this day of 1791, between *H. B.* of the pariſh of in the county of grocer, and *C. D.* of, *&c.* gent. as follows; — Firſt the ſaid *H. B.* agrees to let unto the ſaid *C. D.* a room up two pair of ſtairs forwards in his houſe ſituate in *ſtreet*, in the pariſh and county aforeſaid, ready furniſhed; together with the uſe of his maid-ſervant, in common with other lodgers, at ſuch hours and times when he himſelf can ſpare her, *And alſo* the uſe of a cellar for coals and beer, at and after the rate of

pounds

pounds a year, payable quarterly. *And* it is further agreed, that if either party ſhall quit or leave the ſaid premiſes, he or they reſpectively are to give or take a quarter's warning. The ſaid *C. D.* agrees to take the ſaid room of the ſaid *H. B.* at the rate or price, and payable as aforeſaid, *And alſo* to find or provide for himſelf all manner of linen, and china-ware, whatſoever, that he ſhall have occaſion to make uſe of therein. And that if he ſhall damage or break any part of the furniture of the ſaid *H. B.* that he will amend, make good, or pay her for the repairing the ſame again. *As witneſs, &c.*

Witneſs,

NOTE: The foregoing agreements, if not complied with by either party, may be eſtabliſhed in a court of equity; or an action upon the caſe will lie to recover damages for non-performance of ſuch agreement.

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90. THIS INDENTURE made the day of in the year of the reign of our ſovereign lord *George* the Third, by the grace of God of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, and ſo forth, and in the year of our Lord , BETWEEN *J. S.* of, *&c.* of the one part, and *G. T.* of, *&c.* of the other part; WITNESSETH, That for and in conſideration of the yearly rent, covenants, and agreements herein after contained on the part and behalf of the ſaid *G. T.* his executors, adminiſtrators and aſſigns, to be paid, done, and performed. *He* the ſaid *J. S. hath* demiſed, ſet, and to farm let, and by theſe preſents *doth* demiſe, ſet, and to farm let, unto the ſaid *G. T.* ALL (*here inſert the premiſes demiſed, with a particular deſcription thereof*) ſituate, ſtanding and being in ſtreet in the pariſh of , in the county of , and adjoining on the South part thereof to the premiſes lately in the tenure or occupation of *H. T. together* with all cellars, ſollars, chambers, rooms, yards, gardens, lights, eaſements, ways, paſſages, waters, water-courſes, profits, commodi-

A LEASE (*a*) of an houſe for ſeven years, with the uſual covenants.

1ſt. The demiſe.

2dly. Premiſes.

(*a*) All leaſes being deeds, muſt be impreſſed with the following diſtinct duties, *viz.* Six-pence by ſtat. 5 & 6 W. & M. c. 21. ſ. 3. Six-pence by 9 & 10 W. 3. c. 25. ſ. 30. Six-pence by 12 Ann. ſt. 2. c. 9. ſ. 21. One ſhilling by 30 Geo. 2. c. 19. ſ. 1. One ſhilling by 16 Geo. 3. c. 34. ſ. 6. One ſhilling and ſix-pence by 17 Geo. 3. c. 50. ſ. 17. and one ſhilling by 23 Geo. 3. c. 58. ſ. 1. Theſe duties amount to ſix ſhillings exactly, but the diſtinction between the Stamp Office dies for *Agreements* and *Deeds*, makes the difference. See this fully explained in *Rayner's Pref. to his Obſerv. on Stamp Duties*, ſtat. 28, 29.

ties, and appurtenanees whatſoever, to the ſaid meſſuage or tenement and premiſſes belonging, or in any-wiſe appertaining. To HAVE AND TO HOLD the ſaid meſſuage or tenement, and premiſſes, herein before-mentioned, or intended to be hereby demiſed, with their and every of their appurtenances unto the ſaid *G. T.* his executors, adminiſtrators and aſſigns, from the feaſt day of *the Nativity of St. John* the *Baptiſt*, now next enſuing the date of theſe preſents, for and during, and unto the full end and term of *ſeven years* from thence next enſuing, and fully to be complete and ended. YIELDING AND PAYING therefore yearly and every year during the ſaid term of *ſeven years*, unto the ſaid *J. S.* his executors, adminiſtrators, and aſſigns, the yearly rent or ſum of pounds, of lawful money of *Great Britain*, at the four moſt uſual feaſt days, or times of payment of rent in the year; (that is to ſay) *the feaſt day of St. Michael the Archangel, the Birth of our Lord Chriſt, the Annunciation of the Bleſſed Virgin Mary, and the Nativity of St. John the Baptiſt*, by even and equal portions, the firſt payment thereof to begin and be made on the *feaſt day of St. Michael the Archangel* now next enſuing. AND the ſaid *G. T.* for himſelf, his executors, adminiſtrators and aſſigns, *doth* covenant, promiſe and agree, to and with the ſaid *J. S.* his executors, adminiſtrators and aſſigns, by theſe preſents in manner and form following; (that is to ſay) that he the ſaid *G. T.* his executors, adminiſtrators and aſſigns, or ſome or one of them, ſhall and will yearly, and every year during the ſaid term of *ſeven years*, hereby demiſed, well and truly pay, or cauſe to be paid, unto the ſaid *J. S.* his executors, adminiſtrators or aſſigns the ſaid yearly rent or ſum of pounds, hereby reſerved in the manner and proportions, and on the days and times above limited and appointed for payment thereof, according to the true intent and meaning of theſe preſents. AND ALSO ſhall and will, at his, their, or ſome or one of their own proper coſts and charges from time to time, and at all times hereafter during the ſaid term hereby granted, when, where, and as often as need or occaſion ſhall be or require, well and ſufficiently repair, ſupport, uphold, ſuſtain, maintain, pave, purge, empty, cleanſe, ſcour, glaze, amend and keep the ſaid meſſuage or tenement, and premiſſes hereby demiſed, and every part thereof with the appurtenances thereunto belonging, in, by, and with all manner of needful and neceſſary reparations, ſupportations, glazings,

The Habendum.

3dly. The Reddendum.

4thly. Covenant to pay the yearly rent.

5thly. And, that the leſſee, &c. will repair the premiſes during the term.

ings, pavings, purgings, ſcourings, cleanſings, emptyings and amendments whatſoever; and the ſaid meſſuage or tenements with the appurtenances hereby demiſed, ſo well and ſufficiently upheld, ſuſtained, maintained, repaired, paved, purged, emptied, cleanſed, ſcoured, glazed, amended, and kept at the end, or other ſooner determination of this leaſe, which ſhall firſt happen, ſhall and will peaceably and quietly leave, ſurrender, and yield up, unto the ſaid *J. S.* his executors, adminiſtrators or aſſigns, *together* with all ſuch fixtures and things as are mentioned, or ſet forth in the ſchedule or inventory thereof hereunder written, in as good plight and condition as the ſame now are, (reaſonable uſe and wearing thereof, and all inevitable accidents by fire, which may happen to burn down and conſume the premiſſes or any part thereof, in the mean time only excepted). AND FURTHER, that it ſhall and may be lawful to and for the ſaid *J. S.* his executors, adminiſtrators and aſſigns, with workmen and others, or without, twice or oftener in every year during the time hereby granted, at all convenient times in the day-time to enter and come into and upon the ſaid demiſed premiſes, and every or any part thereof, there to view, ſearch, and ſee, whether the ſame be well and ſufficiently ſupported, upheld, ſuſtained, maintained, repaired, purged, emptied, cleanſed, ſcoured, glazed, and amended, as the ſame ought to be according to the true intent and meaning of theſe preſents, and of all the defects, defaults, decays, lacks, and wants of reparations, and amendments, which upon every or any ſuch view or views ſhall be found, to give or leave notice or warning in writing at the ſaid demiſed premiſes, or ſome part thereof, unto or for the ſaid *G. T.* his executors, adminiſtrators or aſſigns, within the time or ſpace of *three months* from thence next following; within which ſaid time or ſpace of *three months* after every ſuch notice or warning ſhall be given or left as aforeſaid, the ſaid *G. T.* for himſelf, his executors, adminiſtrators and aſſigns, *doth* covenant, promiſe and agree, to and with the ſaid *J. S.* his executors, adminiſtrators and aſſigns, by theſe preſents, from time to time during this demiſe, well and ſufficiently to repair and amend the ſame accordingly. PROVIDED *always*, that if it ſhall happen that the ſaid yearly rent of pounds, or any part thereof ſhall be behind or unpaid for the ſpace of 28 days, next over or after any of the ſaid feaſt days, or times of payment, on which the

6thly. And at the determination thereof leave the ſame in good repair, &c.

7thly. And that the leſſor may enter and view the ſame, &c.

8thly. Cauſe of re-entry for non-payment of rent, or non-performance of the covenants.

ſame ought to be paid as aforeſaid, being lawfully demanded; or if the ſaid *G. T.* his executors, adminiſtrators or aſſigns, and each and every of them, do not in and by all things well and truly obſerve, perform, fulfil and keep all and ſingular the covenants, grants, articles and agreements in theſe preſents contained, which on his and their parts and behalfs are or ought to be obſerved, performed, fulfilled and kept according to the true intent and meaning of theſe preſents, that then, and from thenceforth in any ſuch caſe, and at all times then after, it ſhall and may be lawful to and for the ſaid *J. S.* his executors, adminiſtrators or aſſigns, into the ſaid meſſuage or tenement and premiſſes hereby demiſed, or into any part thereof in the name of the whole, wholly to re-enter, and the ſame to have again, repoſſeſs and enjoy as in his and their firſt and former eſtate, and the ſaid *G. T.* his executors, adminiſtrators and aſſigns, and all other the occupiers of the ſaid premiſſes, thereout and from thenceforth utterly to expel, put out, and amove, this indenture or any thing herein contained to the contrary thereof in any-wiſe notwithſtanding.

Covenant for re-entry.

9thly. Covenant for quiet enjoyment.

AND LASTLY, the ſaid *J. S.* for himſelf, his executors, adminiſtrators and aſſigns, *doth* covenant, promiſe and agree, to and with the ſaid *G. T.* his executors, adminiſtrators and aſſigns, by theſe preſents, that he the ſaid *G. T.* his executors, adminiſtrators and aſſigns, paying the ſaid yearly rent herein before reſerved at the place, and on the ſeveral feaſt days and times before limited, and appointed for payment thereof, and obſerving, performing, paying, fulfilling and keeping, all and ſingular the payments, covenants, grants, articles, proviſoes, conditions and agreements, in theſe preſents contained, which on his, and their parts and behalfs, are or ought to be obſerved, performed, fulfilled and kept according to the true intent and meaning of theſe preſents, ſhall and lawfully may, peaceably and quietly have, hold, occupy, poſſeſs and enjoy the ſaid demiſed premiſſes, with their and every of their appurtenances during the ſaid term of years hereby granted, without the lawful let, ſuit, trouble, moleſtation, denial or eviction, of or by the ſaid *J. S.* his executors, adminiſtrators or aſſigns, or any of them, or of, or by any other perſon or perſons whatſoever, lawfully having, or claiming to have, any right, title, or intereſt, in or to the ſaid demiſed premiſes with the appurtenances, or in, or to any part or parcel thereof, by, from, or under the ſaid *J. S.* his exe-

cutors, adminiſtrators or aſſigns, or any of them, or by or thro' his, their, or any of their means, conſent, or procurement, IN WITNESS *whereof the ſaid parties to theſe preſents have hereunto interchangeably ſet their hands and ſeals, the day and year firſt above written.*

NOTE: *When it is a running term, this proviſo muſt be added before the words,* IN WITNESS.—" AND LASTLY, it is hereby declared and agreed by and between the ſaid parties hereto, and theſe preſents are upon this expreſs condition nevertheleſs, that in caſe the ſaid *G. T.* his executors, adminiſtrators or aſſigns, ſhall be minded or deſirous to quit or leave the ſaid hereby demiſed premiſes, at the end or expiration of the firſt years, of the ſaid term of years hereby demiſed, and ſhall and do give notice in writing under his, their, or any of their hands, of ſuch, his, their, or any of their intention and deſire, to or for the ſaid *J. S.* his executors, adminiſtrators or aſſigns, at his or their dwelling-houſe, or laſt place of abode, *ſix calendar months* before the end or expiration of the firſt years of the ſaid term of years hereby demiſed, that then, and in ſuch caſe, it ſhall and may be lawful to and for the ſaid *G. T.* his executors, adminiſtrators and aſſigns, and every of them, to quit and leave the ſaid hereby demiſed premiſes, at the end of the ſaid firſt years of the ſaid term hereby demiſed, according to ſuch notice ſo to be given or left as aforeſaid; he or they firſt paying all rent then due and in arrear, and leaving the premiſſes in repair, purſuant to the covenants aforeſaid. AND in caſe the ſaid *J. S.* his executors, adminiſtrators or aſſigns, ſhall likewiſe be minded and deſirous to take the ſaid premiſſes into his or their own hands, at the expiration of the ſaid firſt years, and of ſuch his, their, or any of their intention or deſire, ſhall give or leave notice in writing at the ſaid premiſes, to or for the ſaid *G. T.* his executors, adminiſtrators or aſſigns, *ſix months* before the expiration of the ſaid firſt years, that then and in ſuch caſe the ſaid *J. S.* his executors, adminiſtrators or aſſigns, ſhall be at liberty to enter upon and take poſſeſſion of the ſaid premiſſes, at the expiration of the ſaid firſt years of the term hereby demiſed, according to ſuch notice ſo to be given or left as aforeſaid, any thing herein before contained to the contrary in any-wiſe notwithſtanding (*a*).

NOTE: How the leaſe muſt be drawn when it is a *running term.*

(*a*) Note: This proviſo is mutual, which muſt be varied according to the nature of the agreement between the parties.

A leaſe of a farm, by huſband and wife, of the wife's lands, with the uſual covenants reſpecting huſbandry.

N. B. For the neceſſary ſtamps ſee note (*a*) page 37.

91. THIS INDENTURE made the day of in the year of the reign of our ſovereign lord *George* the Third by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* and in the year of our Lord BETWEEN *T. C.* of, *&c.* eſq; and *M.* his wife (which ſaid *M.* is the only daughter and heir at law of *J. K.* eſq; her late father deceaſed) of the one part, and *T. M.* of, *&c.* yeoman, of the other part, WITNESSETH, that for and in conſideration of the rents, covenants and agreement, herein and hereby mentioned and reſerved, on the part and behalf of the ſaid *T. M.* his executors, adminiſtrators and aſſigns, to be obſerved, paid, done and performed. *They* the ſaid *T. C.* and *M.* his wife *have* demiſed, leaſed and to farm let, and by theſe preſents *do* demiſe, leaſe and to farm let, unto the ſaid *T. M.* his executors, adminiſtrators and aſſigns, ALL that meſſuage, tenement, or farm-houſe commonly called or known by the name of with all houſes, edifices, buildings, barns, ſtables, orchards, yards, gardens, backſides, cloſes, lands, meadows, paſtures, wood-grounds, ways, paſſages, commodities and appurtenances whatſoever, thereunto belonging and appertaining, containing by eſtimation acres more or leſs, ſituate, lying and being in the ſeveral pariſhes of and in the ſaid county of and which now and for ſome time laſt paſt have been in the tenure or occupation of the ſaid *T. M. except* and always reſerved out of this preſent demiſe unto the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* ALL, and all manner of timber, and timber-like trees, bodies of pollards and other trees, young ſtoreyers of oak, aſh, aſpe, elm, and beech likely to make timber of pollards, and all wariors now ſtanding, growing or being, or which during the term hereby demiſed ſhall be ſtanding, growing, or being, in, upon, or about the above demiſed premiſes, or any part thereof, *with* free liberty of ingreſs, egreſs and regreſs, to and for the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* with ſervants, horſes, carts, and carriages, to fell, cut down, cart, and carry away the ſame at ſuch times as the underwood ſhall be felled, where ſuch timber ſhall ſtand, and not doing any wilful hurt, ſpoil, or damage to the corn, grain or graſs, of the ſaid *T. M.* his executors, adminiſtrators or aſſigns, then growing upon the premiſes aforeſaid. TO HAVE AND TO HOLD the ſaid meſſuage and premiſes above-mentioned,

Premiſes.

Except all timber, &c.

Habendum.

mentioned, to be hereby demiſed with the appurtenances (*except* as before *excepted*) unto the ſaid *T. M.* his executors, adminiſtrators and aſſigns, from the *feaſt day of St. Michael* the *Archangel* next preceding the date of theſe preſents, for and during, and unto the full end and term of years from thence next enſuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year during the ſaid term, unto the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* the yearly rent or ſum of pounds, *of lawful money of Great Britain*, at the two moſt uſual feaſts or days of payment of rent in the year; (that is to ſay) *the feaſt of the Annunciation of the Bleſſed Virgin Mary, and St. Michael the Archangel*, by even and equal portions. AND ALSO YIELDING AND PAYING unto the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* for every acre of the demiſed premiſes that are and have been uſed for meadow, paſture, and hedge-greens; *And alſo all* that little pightle in which he the ſaid *T. M.* his executors, adminiſtrators or aſſigns, or any of them, ſhall plough, break up, or convert into tillage, the yearly rent of at or upon the feaſt-days and times above-mentioned, and ſo after that rate for every greater or leſſer quantity thereof than one acre over and above the yearly rent hereby before reſerved. AND the ſaid *T. M.* for himſelf, his heirs, executors, adminiſtrators and for every of them, *doth* covenant, promiſe and agree to and with the ſaid *T. C.* and *M.* his wife; and the heirs and aſſigns of the ſaid *M.* in manner following; (that is to ſay,) that he the ſaid *T. M.* his executors, adminiſtrators or aſſigns, or ſome or one of them, ſhall and will well and truly pay or cauſe to be paid unto the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* the yearly rent hereby before reſerved at the days and times and by their proportions above-mentioned and appointed for payment thereof, according to the true intent and meaning of theſe preſents; AND that he the ſaid *T. M.* his executors, adminiſtrators and aſſigns, and every of them, ſhall and will, at their own proper coſts and charges during the ſaid term hereby demiſed, repair, uphold, pale, ſupport, amend, maintain and keep the meſſuage, barns, ſtables and out-houſes, edifices and buildings, above demiſed; *And alſo* hedge, ditch, ſcour, cleanſe, and in good repair keep all and ſingular the hedges, ditches, gates, ſtiles, fences and quickſets; and preſerve all young ſtoreyers

Reddendum.

Covenant to pay the yearly rent;

and that the leſſee, &c. will repair, &c. &c.

ſtoreyers of oak, aſh, aſpe, beech and elm likely to become timber, and preſerve the fruit-trees growing in the orchards, and other the demiſed premiſes, from the hurt and ſpoil of cattle, or any other wilful or negligent ſpoil, and if any of the ſaid trees die, to plant new ones in the room and inſtead thereof. And the ſaid meſſuage, barns, ſtables, edifices and buildings ſo as aforeſaid repaired, upheld, paled, raiſed, ſupported, amended, maintained and kept, and the hedges, ditches, gates, ſtiles, ſtoreyers, fruit-trees and fences ſo hedged, ditched, fenced, ſcoured, cleanſed, and the quickſets preſerved in good repair, ſhall and will, at the end and expiration or other ſooner determination of this preſent leaſe, peaceably and quietly leave, ſurrender and yield up the ſame, and all and every of them, unto the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* AND that he the ſaid *T. M.* his executors, adminiſtrators and aſſigns, and every of them, ſhall, during the ſaid term, lay all the corn and hay growing in and upon the ſaid premiſes into the barns, and ſpend the ſame upon the premiſes; and ſhall not employ, ſell, or carry away, or ſuffer to be ſold or carried off or from the ſaid demiſed premiſes to be elſewhere employed, any ſtraw, ſtover, ſoil or dung whatſoever, which ſhall ariſe or be made thereon, nor ſpend nor waſte the ſtraw and ſtover upon any pretence whatſoever, otherwiſe than to make dung thereof, and all the mud and dung which they ſhall make in the highways thereto adjoining, ſhall lay or leave the ſame to or upon the ſaid premiſes, there to be ſpent and not elſewhere (*except* all ſuch hay as ſhall be growing upon the premiſes, in the laſt year of the term hereby demiſed, when it ſhall and may be lawful to and for the ſaid *T. M.* his executors, adminiſtrators and aſſigns, if they leave the ſaid premiſes, to carry off and ſpend it elſewhere.) AND FURTHER that he the ſaid *T. M.* his executors, adminiſtrators and aſſigns ſhall not, nor will at any time during the ſaid term croſs crop, or double crop any part of the ſaid premiſes, but according to the courſe of huſbandry in the country where the premiſes do lie, but ſhall keep the uſual and ordinary ſeaſons for tilling thereof (that is to ſay) the *firſt* year *wheat*, *rye*, or *barley*, the *ſecond* year *Lent corn*; and ſhall not ſow any barley in any one year of the ſaid term, unleſs it be upon a ſummer's fallow: AND ſhall and will, during the term hereby demiſed, permit and ſuffer *thirty* acres more of the arable land hereby demiſed to lie in paſture, and that he the ſaid *T. M.* his executors,

and at the end thereof leave the ſame in good repair, &c.

and ſhall lay the corn and hay in the barns, &c. and ſpend the ſtover on the premiſes,

and ſhall not double crop, &c. but till the ſame according to the courſe of the country, &c.

Notice

16 March 1793

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The premiſes being copyhold, the leſſors covenant to make a further leaſe to the leſſee.

Covenant to allow to the leſſee bricks, tiles, and timber for repairs, &c.

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and ſhall not double crop, &c. but till the ſame according to the courſe of country, &c.

executors adminiſtrators or aſſigns, ſhall leave *fifty acres* of the ſaid demiſed premiſes for fallow in the laſt year of the term hereby demiſed, which it ſhall and may be lawful to and for the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* to enter on, at the *feaſt of the Annunciation of the Bleſſed Virgin Mary* next before the end of the ſaid term hereby demiſed, to ſtir, dreſs and manure the ſame, and to take all ſuch dung as ſhall be left in or about the yards, to lay on ſuch fallow, and to take and have ſtable-room for horſes, and lodging room for ſervants for doing thereof. And that he the ſaid *T. M.* his executors, adminiſtrators, or aſſigns, ſhall not, nor will cut, lop, or top, or make any hedges, but when the fields whereto they belong are ſowed with *winter corn*, and that at ſeaſonable times of the year, and ſhall not, nor will make up any of the hedges, fell or cut the underwood, nor lop nor top the pollards of or belonging to the ſaid premiſes, or any part thereof under years growth. And the ſaid *T. C.* for himſelf, and for the ſaid *M.* his wife, and her heirs, executors, and adminiſtrators, *doth* by theſe preſents covenant, promiſe, and agree, to and with the ſaid *T. M.* his executors, adminiſtrators, and aſſigns, in manner following (that is to ſay) that for as much as the premiſes aforeſaid are copyhold, and cannot be leaſed for any longer term than for years; and at the end of this demiſe he the ſaid *T. C.* and *M.* his wife, or one of them (the covenants of the ſaid leaſe being performed by the leſſee, his executors, and adminiſtrators) ſhall and will, at the requeſt, half coſts and charges, of the ſaid *T. M.* his executors, or adminiſtrators, make, grant, ſeal, and execute the like leaſe, with this preſent leaſe for *years* longer; and at the end of *years* upon the requeſt as aforeſaid, the like leaſe for *years* longer, and ſo for *years* to *years*, for and during the term of years. And the ſaid *T. C.* for himſelf, and for the ſaid *M.* his wife and her heirs, executors, adminiſtrators and aſſigns, and for every of them, *doth* by theſe preſents further covenant, promiſe and agree to and with the ſaid *T. M.* his executors, adminiſtrators, and aſſigns, that they the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* ſhall and will from time to time, and at all times during this preſent demiſe, on reaſonable requeſt to him, her, or them made by the ſaid *T. M.* his executors, adminiſtrators, or aſſigns, or any of them, and at ſeaſonable times in the year,

The premiſes being copyhold, the leſſors covenant to make a further leaſe to the leſſee.

Covenant to allow to the leſſee bricks, tiles, and timber for repairs, &c.

year, aſſign, appoint, and allow unto the ſaid *T. M.* his executors, adminiſtrators, or aſſigns, brick and tile at the neareſt kiln to the ſaid meſſuage, and ſufficient rough timber on the premiſes hereby demiſed or elſewhere, within *two miles* of the ſaid meſſuage, for all manner of reparations of the ſaid premiſes hereby demiſed. AND that the ſaid *T. M.* his executors, adminiſtrators, and aſſigns, ſhall and may have and enjoy the uſe of the yards and barns belonging to the ſaid premiſes, ſtable-room for his horſes, and houſe-room for himſelf and ſervants, for the threſhing and ſpending of the laſt year's crop, growing and ariſing upon the premiſes hereby demiſed until the day of next, after the end of this demiſe; and that it ſhall and may be lawful to and for the ſaid *T. M.* his executors, adminiſtrators and aſſigns, for and under the ſeveral rents hereby reſerved, and the covenants which on his and their parts are and ought to be paid, performed, and kept, peaceably and quietly to have, hold and enjoy the ſaid meſſuage and premiſes aforeſaid (*except* as before *excepted*), during the term hereby demiſed, without the lawful let, ſuit, trouble, or interruption of the ſaid *T. C.* and *M.* his wife, or the heirs or aſſigns of the ſaid *M.* or any of them. PROVIDED ALWAYS, and on this conſideration *nevertheleſs*, that if it ſhall happen the ſaid yearly rent of pounds, or any part thereof, ſhall be behind or unpaid by the ſpace of *days* next, over or after either of the ſaid feaſts, or days of payment aforeſaid, in the ſeveral years aforeſaid, in which the ſaid ſeveral ſums ought to be paid as aforeſaid. Or if the ſaid *T. M.* his executors, adminiſtrators or aſſigns, or any of them, do and ſhall aſſign or make over this preſent indenture of leaſe of the premiſes hereby demiſed, or any part thereof, for any term or time whatſoever, without the licence and conſent of the ſaid *T. C.* and *M.* his wife, or the heirs, or aſſigns of the ſaid *M.* firſt had and obtained in writing under his, her, and their hands and ſeals for that purpoſe; that then, and from thenceforth it ſhall and may be lawful to and for the ſaid *T. C.* and *M.* his wife, and the heirs and aſſigns of the ſaid *M.* into the ſaid demiſed premiſes, or any part thereof, in the name of the whole wholly to re-enter, and the ſame to have again, retain, repoſſeſs, and enjoy as in his, her, and their firſt and former eſtate and eſtates; and the ſaid *T. M.* his executors, adminiſtrators, and aſſigns, and all other occupiers thereof from thenceforth utterly to expel and put out, any thing

And for quiet enjoyment.

Clauſe of re-entry for non-payment of rent, or if the leſſee aſſigns without licence.

thing herein contained to the contrary thereof in any-wiſe notwithſtanding. *In witneſs, &c.*

Sealed and delivered, &c.

Note, The foregoing leaſe muſt be altered according to the agreement between the landlord and farmer, and according to the nature and cuſtom of huſbandry in the county where the land lies.

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92. TO ALL TO WHOM theſe preſents ſhall come, *H. T.* of, *&c.* eſq; *ſends greeting:* WHEREAS by indenture of leaſe dated the day of laſt, and made between *E. G.* of, *&c.* widow of the one part, and *T. C.* of, *&c.* victualler, of the other part, for the conſiderations therein mentioned, the ſaid *E. G.* DID demiſe, leaſe, grant, and to farm let, unto the ſaid *T. C.* ALL thoſe two meſſuages or tenements (formerly three meſſuages or tenements), yards and paſſage thereunto belonging, with their and every of their appurtenances, ſituate, lying and being in in the ſaid pariſh of , as therein mentioned, and then and now in the poſſeſſion of the ſaid *T. C.* TO HOLD to the ſaid *T. C.* his executors, adminiſtrators and aſſigns, from the feaſt day of *the Annunciation of the Bleſſed Virgin Mary* then laſt paſt, for and during, and unto the full end and term of years, from thence next enſuing, and fully to be complete and ended; *together* with all ſuch goods and things as were mentioned and expreſſed in the ſchedule thereunto written, AT and under the rent of a pepper-corn, payable on the feaſt day of the *Annunciation of the Bleſſed Virgin Mary* laſt paſt for the *firſt* year of the ſaid term thereby demiſed, and the yearly rent of pounds, during the reſidue and remainder of the ſaid term hereby demiſed, payable quarterly, by even and equal portions, the firſt payment thereof to begin and be made on the feaſt day of *St. John the Baptiſt* now next enſuing. In which ſaid leaſe (*amongſt other covenants*) was contained a covenant, that the ſaid *T. C.* his executors, adminiſtrators and aſſigns, ſhould, before the feaſt of *the Annunciation of the Bleſſed Virgin Mary* laſt paſt, well and truly pay, lay out and expend the ſum of pounds, of lawful money of *Great Britain*, in and upon the neceſſary and ſubſtantial repairs of the meſſuages or tenements and premiſes thereby demiſed. AND WHEREAS the ſaid *T. C.* has ſince the date of the ſaid leaſe, in purſuance and part performance of the ſaid

A *Deed Poll, or Indemnity* given to a perſon on aſſigning a leaſe to another, to protect him againſt the covenants of ſuch leaſe.

N. B. The like ſtamp by the ſame acts, for the ſame reaſon.

ſaid covenants, accordingly paid, laid out, and expended the ſum of pounds of lawful money of *Great Britain*, in and upon the neceſſary and ſubſtantial repairs of the ſaid meſſuages or tenements, and premiſes, as appears by the ſeveral workmen's bills and receipts thereupon given. AND WHEREAS the ſaid *H. T.* hath agreed to take the ſaid meſſuages or tenements, and premiſes, on the ſaid feaſt day of *St. John the Baptiſt* now next enſuing, and the ſaid *T. C.* has delivered unto the ſaid *H. T.* the ſaid ſeveral workmen's bills and receipts thereon; and has alſo paid or depoſited in his hands the ſum of pounds in purſuance and in full thereof, and alſo paid or depoſited in his hands the further ſum of pounds, for the ſame quarterly payment of the rent due for the ſaid premiſes, on the performance of the ſaid covenant for the repairs of the ſaid premiſes, from the day of the date hereof, and likewiſe in purſuance of the ſaid agreement has, on the day of the date hereof, bargained, ſold and aſſigned over the ſaid leaſe of the ſaid premiſes thereby demiſed unto the ſaid *H. T.* for the reſt, reſidue and remainder yet to come and unexpired, of the ſaid term of years, as in and by the ſaid leaſe and aſſignment thereof, relation being thereunto had, may more fully and at large appear. Now KNOW YE that I the ſaid *H. T.* as well for the conſiderations aforeſaid, as alſo in conſideration of the ſum of pounds, of lawful money of *Great Britain*, to me in hand paid by the ſaid *T. C.* at or before the ſealing and delivery thereof, (the receipt whereof is hereby acknowledged), *do* hereby for myſelf, my heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *T. C.* his executors and adminiſtrators, that I the ſaid *H. T.* my executors and adminiſtrators, ſhall and will, from time to time and at all times hereafter, ſave, defend and keep harmleſs and indemnify him the ſaid *T. C.* his heirs, executors and adminiſtrators, and his and their lands and tenements, goods and chattels, of, from, and againſt all and every the covenants, clauſes, proviſoes, conditions and agreements whatſoever mentioned, expreſſed, reſerved and contained in the ſaid leaſe, on the tenant's or leſſee's part and behalf thereof, to be paid, kept, done, and performed. And alſo of and from all and all manner of action and actions, ſuit and ſuits whatſoever, brought or to be brought, commenced, or proſecuted, againſt the ſaid *T. C.* his executors or adminiſtrators, for, on account of, or concerning the ſaid

leaſe

leaſe or the ſaid premiſes thereby demiſed; or otherwiſe howſoever relating to the ſame. IN WITNESS whereof I the ſaid *H. T.* have hereunto ſet my hand and ſeal the day of in the year of our Lord .

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of us.

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93. THIS INDENTURE made the day of , in the year of the reign of our ſovereign lord *George* the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, and ſo forth, and in the year of our Lord BETWEEN *C. H.* of the pariſh of , in the city of , widow and adminiſtratrix of *E. H.* of the ſame pariſh and city, carpenter, her late huſband, deceaſed, of the one part, and *C. D.* of , in the county of , of the other part. WHEREAS by indenture of leaſe bearing date the day of which was in the year of our Lord , and made between *S. D.* of in the county aforeſaid, of the one part, and *E. H.* of in the pariſh of , citizen and carpenter, of the other part; he the ſaid *S. D.* for the conſiderations therein mentioned, did demiſe, and to farm let, unto the ſaid *E. H.* ALL thoſe two meſſuages or tenements and premiſſes, ſituate, lying, and being on the *South ſide* of , in the county of , which ſaid houſes are abutting on a paſſage leading from , part of the ſaid houſes being built againſt the ſaid paſſage, and then late in the ſeveral tenures or occupations of *I. S.* and *B. G.* widow, as the ſaid premiſſes are particularly deſcribed in the map or ground-plot thereunto annexed, together with all vaults, lights, eaſements, ways, paſſages, waters, water-courſes, and appurtenances, which of right belong to the ſaid premiſſes, and except any door-ways, or water-courſes going into . TO HOLD the ſame premiſſes unto the ſaid *E. H.* his executors, adminiſtrators, and aſſigns, from the feaſt day of *the birth of our Lord Chriſt* then laſt paſt, for and during and unto the full end and term of years from thence next enſuing, and fully to be complete and ended; at and under the yearly rent of pounds of lawful money of *Great Britain*, payable quarterly, free from all taxes, duties, rates, and aſſeſſments whatſoever. AND WHEREAS the ſaid *E. H.* lately departed

An abſolute aſſignment of a leaſe, together with the policies of inſurance inſured thereon, by the adminiſtratrix of the leſſee.

The likeſtamps, by the ſame acts, for the ſame reaſon.

Recital of the leaſe.

this life inteſtate, and letters of adminiſtration of the goods and chattels, rights and credits, of the ſaid *E. H.* were granted unto the ſaid *C. H.* party hereto, as by reference to the ſaid recited indenture of leaſe, and letters of adminiſtration being had, will more fully appear. AND WHEREAS the ſaid *C. D.* has contracted and agreed, to and with the ſaid *C. H.* for the purchaſe of the ſaid herein before mentioned premiſes, for the remainder of the ſaid term of years, which is now to come therein and unexpired, at or for the price or ſum of pounds. NOW THIS INDENTURE WITNESSETH, that for and in conſideration of the ſaid ſum of pounds of lawful money of *Great Britain*, to the ſaid *C. H.* in hand well and truly paid by the ſaid *C. D.* at or before the ſealing and delivery of theſe preſents, the receipt whereof the ſaid *C. H.* doth hereby acknowledge, and thereof and of and from every part thereof doth acquit, releaſe, and diſcharge the ſaid *C. D.* his heirs, executors and adminiſtrators, for ever by theſe preſents: ſhe the ſaid *C. H.* *hath* granted, bargained, ſold, aſſigned and ſet over, and by theſe preſents *doth* fully and abſolutely grant, bargain, ſell, aſſign, and ſet over, unto the ſaid *C. D.* ALL thoſe two meſſuages or tenements, then late in the ſeveral tenures or occupations of *I. S.* and *B. G.* widow: *And alſo all* that brick meſſuage or tenement lying behind one of the ſaid meſſuages or tenements now or late in the tenure or occupation of *I. S.* which ſaid laſt mentioned meſſuage or tenement was erected and built by the ſaid *E. H.* on the ſaid premiſes, ſince the commencement of the herein before recited indenture of demiſe; and all and ſingular other the premiſſes with their and every of their appurtenances thereunto belonging or appertaining, or therewith uſually held, occupied, or enjoyed, together with the ſaid recited indenture of leaſe: And all the eſtate, right, title and intereſt, both legal and equitable, of her the ſaid *C. H.* of, in, and to the ſame, by virtue of the ſame indenture of leaſe, TO HAVE AND TO HOLD the ſaid three ſeveral meſſuages or tenements, and other the premiſſes, with their and every of their appurtenances, unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns, from *Lady-day* next enſuing the day of the date of theſe preſents, for and during all the reſt, reſidue and remainder of the ſaid term of years, in and by the ſaid recited indenture of leaſe granted, which is now to come and unexpired, *ſubject* only to the rents and covenants therein mentioned,

Aſſignment thereof.

To have and to hold for the remainder of the term.

tioned, reſerved and contained from and after *Lady-day* , on the tenant or leſſee's part and behalf to be paid, kept, done and performed; AND the ſaid *C. H. doth* for herſelf, her heirs, executors and adminiſtrators, covenant, promiſe and agree to and with the ſaid *C. D.* his executors, adminiſtrators and aſſigns, by theſe preſents in manner following (that is to ſay) that the ſaid recited indenture of leaſe, now at the time of the ſealing and delivery hereof, is a good and valid leaſe in the law of the premiſſes thereby demiſed, and now is, and ſtands in full force and virtue, not forfeited, ſurrendered, or otherwiſe incumbered, or made void or voidable by her or the ſaid *E. H.* deceaſed. AND ALSO that ſhe the ſaid *C. H.* now at the time of the ſealing and delivery hereof, hath in herſelf good right, full power, and lawful and abſolute authority, to aſſign and transfer all and ſingular the ſaid premiſſes, with their appurtenances, unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns, in manner and form aforeſaid, according to the true intent and meaning of theſe preſents. AND ALSO that it ſhall and may be lawful to and for the ſaid *C. D.* his executors, adminiſtrators and aſſigns, from henceforth peaceably and quietly to have, hold, occupy, poſſeſs and enjoy, all and ſingular the ſaid premiſſes, with their and every of their appurtenances, from *Lady-day* , and to receive the rents, iſſues and profits thereof, to his and their own uſe and benefit, for and during all the reſt, reſidue and remainder which is now to come and unexpired of and in the ſaid term of years, by the ſaid recited indenture of leaſe granted, without any let, ſuit, or interruption, of or by the ſaid *C. H.* or any other perſon or perſons, claiming or to claim, by, from, or under her or the ſaid *E. H.* deceaſed; and that the ſaid hereby aſſigned premiſſes now are and be free and clear of and from all incumbrances whatſoever had, made, done, or ſuffered by the ſaid *C. H.* or the ſaid *E. H.* deceaſed, or any other perſon or perſons whatſoever claiming, or to claim, by, from, or under her or him, the ſaid yearly rent reſerved by the ſaid recited indenture of leaſe, and the covenants therein contained, which on the tenants or leſſees part and behalf ſhall from *Lady-day* aforeſaid grow due, and ought to be paid, kept, done and performed; *(only excepted.)* AND FURTHER that ſhe the ſaid *C. H.* and all and every other perſon and perſons claiming or to claim any eſtate or intereſt of in or to the ſaid premiſes, or any part thereof by,

Covenant that the leaſe is in force, not void or voidable;

and that the affignor hath power to aſſign;

And for quiet enjoyment to the aſſignee.

And that the premiſes are free from incumbrances.

And for further aſſurances;

from or under her or the ſaid *E. H.* deceaſed, ſhall and will at any time hereafter, upon the requeſt and at the coſt and charges of the ſaid *C. D.* his executors, adminiſtrators or aſſigns, make, do, and execute all and every ſuch further and other lawful and reaſonable acts, deeds, aſſignments and aſſurances in the law whatſoever, for the better ſtrengthening and confirming the aſſignment hereby made of all and ſingular the ſaid premiſes, with their appurtenances, for and during all the remainder which ſhall be then to come and unexpired of the ſaid term of years, unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns, as by him or them, or his or their counſel learned in the law, ſhall be reaſonably deviſed, or adviſed, and required. AND the ſaid *C. D. doth* for himſelf, his heirs, executors or adminiſtrators, covenant, promiſe, and agree to and with the ſaid *G. H.* her executors and adminiſtrators, by theſe preſents, that he the ſaid *C. D.* his executors, adminiſtrators or aſſigns, ſhall and will from time to time and at all times hereafter, during the remainder now to come and unexpired, of the ſaid term of years, in and by the ſaid recited indenture of leaſe granted, well and truly pay, or cauſe to be paid, the ſaid yearly rent by the ſaid indenture of leaſe reſerved, and perform all and ſingular the covenants and agreements therein contained, and which from and after *Lady-day* laſt paſt, on the tenants or leſſees part and behalf are or ought to be paid, kept, done, and performed, and of and from all actions, ſuits, recoveries, judgments, executions, coſts, charges, damages and expences whatſoever, that ſhall or may be commenced, obtained, recovered, or proſecuted againſt the ſaid *C. H.* her executors or adminiſtrators, for or on account of the non-payment of the rent, or non-performance of the ſaid covenants and agreements, or any of them, from and after *Lady-day* aforeſaid, ſhall and will, well and ſufficiently, ſave harmleſs and keep indemnified the ſaid *C. H.* her heirs, executors, or adminiſtrators, their and each and every of their lands or tenements, goods and chattels. NOW THIS INDENTURE FURTHER WITNESSETH, that for the conſiderations aforeſaid, ſhe the ſaid *C. H. hath* bargained, ſold, aſſigned, and ſet over, and by theſe preſents *doth* bargain, ſell, aſſign and ſet over, unto the ſaid *C. D.* his executors, adminiſtrators and aſſigns, *two* ſeveral inſtruments or policies of inſurance, by which the herein before recited premiſes are inſured from fire in the *Hand-in-Hand* inſurance-office,

Covenant by the aſſignee to pay the rent, and to ſave the aſſignor harmleſs.

Aſſignment of policies of inſurance.

office, bearing date reſpectively the day of , in the year , and day of , in the year , and which ſaid two policies are numbered as follows: No. 72504 and No. 47678; and all and every ſum and ſums of money thereby inſured, and which may at any time or times hereafter become due, or payable by virtue thereof, together with all the right, title, property, benefit, and intereſt of her the ſaid *C. H.* of in and to the ſaid two ſeveral inſtruments or policies of inſurance, with all powers and remedies for the recovery thereof. *In witneſs, &c.*

Sealed and delivered, &c.

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94. To ALL TO WHOM theſe preſents ſhall come *E. U.* of , in the county of , executor of the laſt will and teſtament of *H. I.* late of , in the county aforeſaid, gentleman, deceaſed, *ſends greeting:* WHEREAS by ſeveral deeds poll, or policies of inſurance, numbered as follows, *viz.* No. 4888 and No. 48889, and bearing date reſpectively the day of , in the year of our Lord , and the day of , in the year of our Lord , and executed by *D. C.* and others, the truſtees or directors of the *Hand-in-Hand* fire-office, two ſeveral ſums of pounds, and pounds, are thereby inſured from fire from the date hereof for the two ſeveral terms of years, and years, by the ſaid *E. U.* his executors, adminiſtrators and aſſigns, on two ſeveral timber-houſes, ſituate on the South-ſide of , in the pariſh of aforeſaid, being the *third* and *fourth* houſes Weſtward from , and then, or now, or late in the ſeveral poſſeſſions of one *R. B. W. M.* of , in the pariſh of aforeſaid, as by the ſaid two ſeveral deeds poll, or policies of inſurance, reference being unto them reſpectively had, may more fully appear. NOW KNOW YE, that the ſaid *E. U.* for and in conſideration of the ſum of pounds, to him in hand paid by the ſaid *W. M.* (the receipt whereof is hereby acknowledged) *hath* bargained, ſold, aſſigned, and ſet over, and by theſe preſents *doth* abſolutely bargain, ſell, aſſign, and ſet over, unto the ſaid *W. M.* his executors, adminiſtrators and aſſigns, the aforeſaid two ſeveral recited deeds poll, or policies of inſurance, and the monies that ſhall or may become due thereon, and all benefit and advantage thereof,

An aſſignment of policies of inſurance by deed poll.

The like ſtamps, by the ſame acts for the ſame reaſons.

and all the ſaid *E. U.*'s right, title, and intereſt, of in and to the ſame reſpectively; AND the ſaid *E. U. doth* alſo hereby authorize, and empower the ſaid *W. M.* his executors, adminiſtrators, and aſſigns, in his or their own name or names, but to and for his and their own proper uſe, or for and in the name of the ſaid *E. U.* his executors or adminiſtrators, to receive of and from the ſaid truſtees or directors, or their ſucceſſors, the ſaid monies that ſhall or may become due on the aforeſaid two ſeveral recited deeds poll, or policies of inſurance, and on non-payment thereof, or any part thereof, to ſue for, recover and receive the ſame, and on payment thereof, or any part thereof, to give receipts, acquittances, or other diſcharges for the ſame; and all and whatſoever the ſaid *W. M.* his executors, adminiſtrators and aſſigns, ſhall lawfully do, or cauſe to be done, in and about the premiſes aforeſaid; the ſaid *E. U. doth* hereby ratify, confirm, and allow, as fully and effectually as if he himſelf was perſonally preſent, and did the ſame, hereby granting unto him and them his full and whole power and authority in and about the aforeſaid premiſes. IN WITNESS whereof the ſaid *E. U.* hath hereunto ſet his hand and ſeal the day of , in the year of our Lord .

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of }

The form of a leaſe in ejectment, where the premiſes are uninhabited, to recover poſſeſſion.

95. THIS INDENTURE made the day of in the year of the reign of our ſovereign lord *George* the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, and ſo forth, and in the year of our Lord , BETWEEN *D. E.* of, *&c.* eſq; of the one part, and *F. G.* of, *&c.* yeoman, of the other part, WITNESSETH, that he the ſaid *D. E.* for divers good cauſes and conſiderations him thereunto moving, *hath* demiſed, granted, and to farm letten, and by theſe preſents *doth* demiſe, grant, and to farm let, unto the ſaid *F. G.* ALL that meſſuage or tenement, commonly called or known by the name and ſign of the , ſituate, lying and being in , in the pariſh of , in the county of , and late in the poſſeſſion or occupation of one *H. I.* TO HAVE AND TO HOLD the ſaid meſſuage or tenement,

The like ſtamps, by the ſame acts, for the ſame reaſons.

tenement, and premiſſes, with the appurtenances, from the date of theſe preſents, for, during, and unto the full end and term of *five years* from thence next enſuing, and fully to be complete and ended. PROVIDED ALWAYS and on this condition nevertheleſs, that if the ſaid *D. E.* his executors or adminiſtrators, ſhall, at any time after the day of this preſent month of , tender the ſaid *F. G.* his executors or adminiſtrators, *one ſhilling*, then this preſent indenture and every thing herein contained ſhall be void, and of none effect, any thing herein contained to the contrary in any wiſe notwithſtanding. *In witneſs* whereof the ſaid parties to theſe preſents have hereunto interchangeably ſet their hands and ſeals, the day and year firſt above written.

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of }

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96. THIS INDENTURE, made the day of , in the 15th year of the reign of our ſovereign lord *George* the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. and in the year of our Lord , BETWEEN *S. P.* of, &c. victualler, of the one part, and *J. B.* of, &c. brewer, of the other part, WITNESSETH, that the ſaid *S. P.* for and in conſideration of the ſum of pounds, of lawful money of *Great Britain*, to him in hand well and truly paid by the ſaid *J. B.* the receipt whereof is hereby acknowledged, *hath* given, granted, bargained, and ſold, and by theſe preſents *doth* give, grant, bargain and ſell, unto the ſaid *J. B.* ALL and every the goods (*a*), chattels, houſhold goods and furniture, bedding, veſſels, liquors, and other things whatſoever of him the ſaid *S. P.* and which are ſpecified and contained in the ſchedule hereunder written; and all the full and whole right, property, intereſt, claim,

Form of an abſolute bill of ſale.

The like ſtamps by the ſame acts, for the ſame reaſons.

(*a*) It is neceſſary to remark upon this part of the bill of ſale, that a grant, aſſignment, bill of ſale, or other conveyance of *all* the property of *a trader*, or of ſuch a portion of his property, as thereby *diſables* him from carrying on his trade and *tends* in any event to delay or defeat *a creditor* from recovering a *legal debt* is in *itſelf*, an *act of bankruptcy*; for, it is conſidered as a *fraudulent gift* within the meaning of the 13 Eliz. c. 7. and of courſe void. See Cook's Bank. Law, 91.

and demand whatſoever of him the ſaid *S. P.* either in law or equity, of, in, and to the ſame, and every part and parcel thereof, TO HAVE AND TO HOLD the ſame, and every part and parcel thereof to him the ſaid *J. B.* his executors, adminiſtrators and aſſigns, *To the ſole and only proper uſe*, advantage, benefit, and behoof of him the ſaid *J. B.* his executors, adminiſtrators and aſſigns, abſolutely for ever, without any account whatſoever to be made, given or rendered for the ſame, or any part thereof, to him the ſaid *S. P.* his executors, adminiſtrators or aſſigns, or any of them; *And* the ſaid *S. P.* all and ſingular the ſaid goods, chattels, and premiſſes above bargained and ſold, or mentioned or intended ſo to be, and every part and parcel thereof, to him the ſaid *J. B.* his executors, adminiſtrators and aſſigns, againſt him the ſaid *S. P.* his executors and adminiſtrators, and againſt all other perſon and perſons whatſoever, ſhall and will warrant, and for ever defend by theſe preſents; *And* that theſe preſents may be the more effectual, and the ſaid *J. B.* his executors, adminiſtrators and aſſigns, may the better have and enjoy the benefit and advantage of the bargain and ſale hereby made, he the ſaid *S. P. hath*, in the preſence of the witneſſes who have ſubſcribed their names to the due execution of theſe preſents, put the ſaid *J. B.* in full poſſeſſion of the ſaid ſeveral goods, chattels and things above granted, bargained and ſold, and mentioned and contained in the ſchedule hereunder written, and every part or parcel thereof, by delivering unto the ſaid *J. B.* a *half-pint pewter pot*, parcel of the goods and chattels, in the name of the poſſeſſion thereof, and of all other the goods, chattels and things whatſoever in the ſaid underwritten ſchedule contained, and herein before granted, bargained and ſold, or mentioned or intended ſo to be, to him the ſaid *J. B.* IN WITNESS whereof the ſaid *S. P.* hath hereunto ſet his hand and ſeal the day and year firſt above-written.

Sealed and *delivered* [being firſt duly ſtamped] in the preſence of } The ſchedule (*b*) referred to by the deed above

Note: *If it is only a conditional bill of ſale by way of mortgage of the goods and chattels, till ſuch time the money lent is re-*

(*b*) The ſchedule muſt be written upon a two ſhilling and ſix-penny ſtamp, by the ſame act. See *Rayner's* Obſervations on the Stamp Duty ſtatutes, octavo edition 1786, p. 83.

paid

paid with intereſt, the following proviſo of redemption muſt be inſerted therein immediately after the bargainor's warranty, to defend the bargainee in poſſeſſion of the goods ſold or mortgaged, beginning after the words " for ever defend by theſe preſents."

PROVIDED ALWAYS, that it is hereby agreed between the ſaid parties to theſe preſents, that if *S. P.* his executors, adminiſtrators or aſſigns, do and ſhall well and truly, pay or cauſe to be paid unto the ſaid *J. B.* his executors, adminiſtrators or aſſigns, the full ſum of pounds, with lawful intereſt for the ſame, at and after the rate of pounds *per cent.* on the day of next enſuing the day of the date of theſe preſents, for the redemption of the ſaid hereby bargained and ſold premiſſes, then theſe preſents, and every clauſe, article, condition and thing herein contained ſhall ceaſe, and be utterly void, or elſe remain in full force and effect. IN WITNESS, *&c.*

Sealed, &c.

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97. BE IT KNOWN unto all men by theſe preſents, that *whereas* WE, whoſe hands and ſeals are hereunto put, DO ſeverally hold ſeveral meſſuages or dwelling-houſes, with their appurtenances, at our reſpective names hereunto mentioned and particularly deſcribed, ſituate in , in the county of , or liberty of the ſame, heretofore in the poſſeſſion of *G. H.* eſq; lately recovered from him, by an ejectment brought in the court of , on the demiſe of *R. S.* eſq; and a writ of *habere facias poſſeſſionem* has been executed therein, by the ſheriff of the ſaid county, and poſſeſſion thereof delivered by him to the uſe of the ſaid *G. H.* Now WE the ſaid perſons under-named *do* hereby ſeverally attorn tenants, of and for the ſaid premiſſes in our reſpective holding unto the ſaid *G. H.* at and under the ſeveral yearly rents, and payable at the days and times at our reſpective names under-mentioned; he the ſaid *G. H.* paying or allowing thereout all leys, taxes and repairs. AND we have this day ſeverally paid to *H. H.* for the uſe of the ſaid *G. H. one ſhilling* for and in the name of ſuch attornment. *In witneſs* whereof we have hereunto ſet our

A tenant's attornment to his landlord.

Note; to this attornment muſt be added a rental, with the particular times when each tenant is to attorn.

This attornment muſt *not* be on a ſix ſhilling ſtamp, but on a ſtamp amounting to ſix ſhillings. See *ante*, fol. 31. and *Rayner's* Obſervations on Stamp Duty Statutes. p. 83.

hands

hands and ſeals this day of , in the year of our Lord .

Sealed and *delivered.*

An attornment (*a*) in another form.

(*a*) NOTE: Attornments muſt be indorſed on the deed to which they relate, or elſe declared in a ſeparate deed.

98. MEMORANDUM, That the perſons whoſe names are hereunder written DID the day of 1791, attorn and become tenants unto the above named *J. H.* according to the purpoſe of the leaſe within mentioned, having notice of the ſaid grant; and for proof thereof every one of them DID give unto the ſaid *I. H.* in the name of attornment.

Tenants names.

Witneſs hereto.

The memorial of a leaſe for years. (*a*)

99. A MEMORIAL *to be regiſtered purſuant to an Act of Parliament made for that purpoſe.* OF AN INDENTURE of leaſe, bearing date the day of , in the year of our Lord one thouſand ſeven hundred and ninety-one, and made between *A. B.* of, *&c.* of the one part, and *C. D.* of, *&c.* of the other part. Whereby the ſaid *A. B.* for the conſiderations therein-mentioned, *did* demiſe to the ſaid *C. D.* ALL, *&c.* (*here inſert the premiſes demiſed as they are particularly deſcribed in the indenture of leaſe.*) TO HOLD for the term of years to commence from , at the yearly rent of , of lawful money of *Great Britain*, *which* ſaid indenture of leaſe is witneſſed by *J. J.* of, *&c.* and *T. T.* of, *&c.* and is hereby required to be regiſtered purſuant to the ſaid act by me the ſaid *C. D.* the leſſee in the ſaid indenture of leaſe. As WITNESS, *&c.*

Signed, *&c.* *C. D.*

(*a*) For the ſeveral forms and ceremonies required by law for the regiſtering deeds in the counties of *York* and *Middleſex* which are the only *two regiſter counties* in England we muſt refer to the ſtatutes of 2 & 3 Ann c. 4. 6 Ann c. 35. 7 Ann c. 20, and 8 Geo. 2. c. 6: remarking that, although it is poſitively ſaid by ſtat. 7 Ann. c. 20. that a regiſtered deed ſhall take place of an unregiſtered deed, yet equity will not ſet an unregiſtered deed aſide in favour of a party who knew it was unregiſtered at the time, becauſe he had that notice which the act of parliament intended he ſhould have. Cowp. Rep. 712. And it is alſo neceſſary to remark that by the 17 Geo. 3. c. 26. called THE ANNUITY ACT; a *Memorial* of all deeds, bonds, &c. for granting life annuities ſhall, within twenty days after the execution thereof be enrolled in the Court of Chancery, which *Memorial* ſhall contain the date, names of the parties, witneſſes, the whole *conſideration* in words at length, and if any part of the conſideration ſhall be returned or any *notes* ſhall not be paid when due, the Court may order the deed to be cancelled. See 1 Term Rep. 378. 732. 2 Term Rep. 366. 603. 3 Term Rep. 298. 554.

Memorial of a mortgage for years.

100. A MEMORIAL *to be regiſtered purſuant, &c.* OF AN INDENTURE of mortgage dated the day of , 1791, and made between *A. B.* of, *&c.* of the one part, and *C. D.* of, *&c.* of the other part. Whereby the ſaid *A. B.* for and in conſideration of pounds, demiſed unto the ſaid *C. D. All, &c.* (*here inſert the premiſes as particularly deſcribed in the indenture of mortgage*) TO HOLD unto the ſaid *C. D.* for the term of years, SUBJECT NEVERTHELESS to a proviſo that the ſame ſhall be void on payment of the ſum of pounds, of lawful money of *Great Britain*; together with lawful intereſt for the ſame, on the day of , 1791, *which* ſaid indenture of mortgage is witneſſed by *J. J.* of, *&c. T. T.* of, *&c.* and is hereby required to be regiſtered purſuant to the ſaid act of parliament, by me the ſaid *A. B.* the grantor in the ſaid indenture of mortgage. As WITNESS, *&c.*

Signed, &c. *A. B.*

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101. *Bill of Coſts for regiſtering a Judgment in* Middleſex.

	Monies out of Pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Drawing and engroſſing memorial of the judgment to regiſter and parchment	0	0	2	0	1	20	0	3	6
Attending regiſter to get his certificate	0	0	0	0	1	8	0	3	4
Paid for certificate	0	2	6	0	2	6	0	2	6
Drawing and engroſſing affidavit of regiſter's ſignature, duty and oath	0	2	7	0	4	1	0	5	7
Attending to ſwear ſame, and to get memorial regiſtered	0	0	0	0	3	4	0	6	8
Paid regiſtering	0	5	0	0	5	0	0	5	0
£.	0	10	3	0	18	5	1	6	7

CHAPTER THE FIFTH.

The Law of Eſtovers.

1 Bl. Com. 441.
2 Bl. Com. 35.
Co. Lit. 41.
Dyer 19.
4 Co. 86.
11 Co. 46.

1. ESTOVERS are of three kinds in law, and are incident to the eſtate of every tenant, whether for life, or years. *Eſtover* or *boot* ſignifies a liberty of taking neceſſary wood for the uſe or furniture of the houſe or farm; and any of theſe a tenant may take without aſſignment of the landlord, unleſs he be reſtrained by ſpecial covenant in his leaſe, which is uſual among landlords, eſpecially if the farm be any thing conſiderable, when they commonly limit the tenant how much *houſe-boot*, *plough-boot*, or *hedge-boot*, he may take without aſſignment, and how much by aſſignment. *Houſe-boot* is of two kinds, the one to repair the houſes, the other to burn, which is called *fire-boot*. There is an *eſtover* called *plough-boot*, *viz.* ſtuff to mend the tenant's ploughs, carts, harrows, wains, and for making rakes and forks, for getting in his hay and corn. The *eſtover* called *hedge-boot*, or *hay-boot*, is timber and wood for making gates and ſtiles, and boughs and buſhes for mending and repairing hedges and fences.

2. If a tenant for life or years cut down trees, or pull down houſes, or ſuffer them to fall down, the leſſor ſhall have the trees and timber of the ſaid houſes; for the leſſee had them only as things annexed to the land, and this ſeverance will not give him a greater eſtate in them, but his intereſt is then determined.

3. The landlord ſhall likewiſe have *windfalls*; that is timber-trees blown down by wind and tempeſt, becauſe they are parcel of his inheritance, ſo that the tenant for *life* or *years* cannot have them, unleſs it be to build withal, where houſes are in decay: but if they are *dotards* or *pollards* without timber, which bear neither leaves nor fruit in ſummer, the tenant ſhall have ſuch when they are blown down.

4. *Eſtovers* granted to be burnt in a houſe, go to the perſon that has the houſe by whatſoever title; for one is inſeparably incident to the other.

5. Leſſees for *life* or *years*, tenants in *dower* or by *curteſy*, or tenants *in-tail after poſſibility*, *&c.* have only a ſpecial intereſt or property in the trees, as things annexed to the lands, ſo long as they are annexed thereto; but if they or any

any other ſever the trees from the land, then their intereſt is determined, and the leſſor may take the trees as things that are parcel of his inheritance, the intereſt of the leſſee being determined.

6. If a ſtranger cut down a tree growing on the land of a leſſee for *years*, and carry it or the bark thereof away, the leſſor at his election may have either an action of *trover* againſt the ſtranger, or an action of *waſte* againſt the leſſee; for the property of the timber is always in the leſſor.

7. If a perſon have *eſtovers* uncertain in *ten acres* of wood, and *five* of them deſcend to him, he ſhall have the whole out of the reſidue.

8. If a man grant to another *eſtovers* uncertain in ſuch a wood, and afterward the grantor make ſuch waſte in the wood, as that there is not ſufficient ſtore left, out of which the grantee may take his *eſtovers*, he may have a writ of *quo minus* againſt the grantor, which is in the nature of a *prohibition*.

9. A right to *glean* in the harveſt field cannot be claimed as part of the general common law of the land. Duberley v. Page. 2 Term Rep. 391. 3 Term Rep. 445.

10. The lord of a manor has no right, under the ſtatute of *Merton*, to encloſe and approve the waſtes of a manor, where the tenants of a manor have a right to *dig gravel* on the waſtes, or to take *eſtovers* there; but any perſon who is ſeiſed in fee of part of a waſte within a manor may approve, leaving a ſufficiency of common, although not lord of the manor.

CHAPTER THE SIXTH.

The Law of Rents.

1. RENT is a ſpecies of incorporeal hereditament, and ſignifies a compenſation or return, in the nature of an acknowledgment given for the poſſeſſion of ſome corporeal inheritance. It is defined to be *a certain profit* reſerved to *the grantor*, either in money, ſervices, manual operations, or ſome other thing, not parcel of the premiſſes demiſed, *iſſuing yearly*, (though there is no occaſion for it to iſſue every ſucceſſive year) *out of lands and tenements corporeal*, that is from ſome inheritance whereunto the owner or grantee of the rent may have recourſe to *diſtrain*; and therefore a rent cannot be reſerved out of an advowſon, a common, an office, a franchiſe, or the like. At the common law Co. Lit. 144. 2 Bl. Com. 41. 4 Bac. Abr. 335. 8 Co. 71. Plowd. 13. 5 Com. Dig. 421. Co. Lit. 47. 5 Com. Dig. 422.

law there were three kinds of rents, *viz.* rent ſervice, a rent charge, and rent ſeck. The firſt was where the tenant held his land by fealty or other ſervices, and a certain rent. The ſecond is where a man ſeiſed of land grants the whole of his eſtate in fee, without reſerving any future intereſt in it, at a yearly rent to be iſſuing out of the ſame, with a clauſe of *diſtreſs*; for by this kind of grant the land becomes *charged* with the *diſtreſs* for the *rent*, which it would not otherwiſe have been. The third is in effect nothing more than a rent reſerved by deed, without any clauſe of diſtreſs. There is alſo *rack rent*, which is only a rent to the *full value* of the tenement, or near it; and *fee-farm rent*, which is a rent charge, or perpetual rent reſerved on a grant in fee of at leaſt one-fourth of the value of the lands, and is indeed only letting lands to farm in *fee-ſimple*, inſtead of the uſual method, for *life* or *years*; but as to the mode of recovering them, all material diſtinction is, in effect, aboliſhed by the ſtatute 4 *Geo.* 2. *c.* 28. as we ſhall ſhew in the chapter concerning "diſtreſs for rent," and examine at preſent,

See 2 Bl. Com. 43. Madox Firmam. Burg. 3. Dougl. Rep. 602; and Mr. Hargrave's Co. Lit. 144. Note (3)

1. *To and by whom rent is payable.*
2. *At what place.*
3. *Of the* TIME *of payment.*
4. *Of the* DEMAND *neceſſary to be made.*
5. *The tender and acceptance of rent.*
6. *Of the conſequences of non payment.*
7. *Of notice to quit.*
8. *Of double rent.*

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1. *To and by whom Rent is payable.*

Co. Lit. 47. 143. Hob. 130.

2. RENT, properly ſo called, muſt be reſerved or made payable, upon every feoffment, gift, or leaſe, to the feoffor, donor, or leſſor, and their heirs only, and cannot in any manner be reſerved or made payable to a ſtranger; for rent being by way of retribution for the land demiſed, can only be payable to him from whom the land paſſes: And therefore if a tenant in tail demiſe the intailed land for years (*a*), rendering rent to him and his heirs generally, it will, on the death of the leſſor, become payable, by intendment of law, to the heir in tail: So alſo, if a tenant for life, who is impowered to make leaſes (*b*), demiſes the eſtate, with a reſervation of rent to him, his heirs and aſ-

(*a*) Vide ante p. 2. ſ. iv.

(*b*) Ante p. 6. ſ. ix.

ſigns, yet on his death it becomes payable to him in remainder (*c*). Thus alſo, if a tenant in fee let, rendering rent generally; or a leſſee for years make an under-leaſe of part of his term, reſerving rent to him and his heirs, it ſhall go, on their deaths reſpectively, in the firſt caſe to the heir at law, and in the ſecond to the executors or adminiſtrators of the leſſor (*d*). But a man may reſerve a rent to himſelf for life, and a different rent to his heir (*e*).

(*c*) 1 Vent. 161.
8 Co. 70.
(*d*) 1 Vent. 162. Co. Lit. 47. Dyer 45. 5 Com. Dig. 423.
(*e*) Co. Lit. 213. 214.

3. If a leſſor grant a term of years at a reſerved rent, and afterwards aſſign ſuch rent, and the *leſſee* agree to become tenant to the *aſſignee*, the rent becomes payable to ſuch aſſignee, and he may *diſtrain*, or bring an action of *debt* to recover the arrears.

4. If a tenant in fee-ſimple demiſe lands for a certain number of years at a reſerved rent, and die within the term, the rent in arrear at the time of his death becomes payable to the *perſonal repreſentative* of the leſſor, and does not go to his *heirs*, becauſe rent once due becomes a perſonalty; but if the leſſor die before the day, *the heir* ſhall have the rent.

Cro. Eliz. 575. 10 Co. 128. 5 Com. Dig. 425.

5. In an eccleſiaſtical diſtribution of a teſtator's or inteſtate's eſtate, the executor or adminiſtrator muſt pay *rent* before *bonds*, becauſe *rent* favours of the realty, and ariſes from the profits of the land demiſed.

6. On a bond for performance of the covenants of a leaſe, if the leſſee fail in payment of the rent, ſuch bond is forfeited; for the payment of the rent is part of the condition of the bond: For example, if *A.* let a parcel of land to *B.* on leaſe, with a reſervation of 5 *l.* rent to himſelf, payable at a future day, and *B.* bind himſelf in a bond of 200 *l.* to pay ſuch reſerved rent, and before any day of payment, *A. ouſts B.* out of any part of the ſaid demiſed premiſſes, and occupies the remainder for the whole term, and refuſes to pay any rent, yet the bond is not forfeited: for by *ouſting* the tenant out of part of the demiſed premiſſes, the whole rent becomes in ſuſpence, as it aroſe from the leſſor's own act; but if one day of payment be paſt before the *ouſter*, the tenant muſt either pay the rent, or forfeit his bond; or if the tenant be put out of the land by a ſtranger, who keeps poſſeſſion thereof until a day of payment of rent be paſt, he muſt pay ſuch rent on the day whereon it was agreed to be paid, or he incurs the forfeiture aforeſaid, becauſe his remedy at law is againſt the ſtranger.

7. A

7. A man granting a leaſe on condition that the rent ſhall ſhall be paid at a given time, if, before that time come, the leſſor give the leſſee a general releaſe of all actions and demands, this releaſe will not acquit the leſſee of the rent, becauſe it was neither due, nor paid at the time the releaſe was given: And a general releaſe of all *demands* does not releaſe rent due on a leaſe.

8. A perſon having a leaſe of lands for any given term, *&c.* and demiſes ſome part of ſuch term, at a reſerved rent, in that caſe he may diſtrain for the reſerved rent, or bring an action of *debt* for the ſame, becauſe the remainder veſts in him.

9. Where any perſon *holds* lands for a term in right of his wife, and demiſes the ſame to another for a leſs term, at a reſerved rent, and dies, the executors of the huſband are entitled to the rent during that term, and at the expiration thereof the remainder of the original term reverts to the wife, who would have been entitled to nothing if her huſband had granted the whole term.

10. A rent granted by two or more *tenants in common*, is *ſeveral*; but if they make a leaſe with a reſerved rent, they are entitled to no more than the amount of ſuch reſerved rent between them all.

11. If two or more *co-parceners* make a leaſe with a reſerved rent, they are entitled to this rent in *common*, becauſe the reverſion remains in them; but if they afterwards grant the reverſion excluſive of the rent, they by this act, make themſelves *joint-tenants* to the rent.

12. Where lands have been leaſed for a term on a reſerved rent, and a ſtranger recovers part of the lands, the tenant muſt pay to each party in proportion to the quantity that he holds from them reſpectively.

13. The executors of a leſſee who has aſſigned over his term, are not anſwerable for rent due after his deceaſe; for if a tenant for years aſſign his leaſe, the landlord may charge which of them he will.

14. Where a leſſor grants away the reverſion after the aſſignment of the leſſee, the grantee cannot maintain an action of *debt* againſt the leſſee for the rent.

(c) Vide poſt c. 8.

15. If a leſſor or landlord demiſes premiſes on a leaſe to a leſſee or tenant to pay the rent on the *four feaſt days*, or within *fifteen days* after either of them, and the leſſor or landlord dies after either of the ſaid feaſt days, the heir of the leſſor ſhall have the rent, becauſe the *feaſt day* is but *voluntary*,

voluntary, and the *legal day* of payment is at the end of the *fifteen days*.

16. On a leaſe for years by *parol* or *deed-poll* from joint-tenants, reſerving rent to one of them, ſuch rent ſhall *enure* to both; but if it be by *deed indented*, it will *enure* to ſuch perſon by way of concluſion.

17. A man holds lands in right of his wife, and they leaſe the ſame at a reſerved rent; if the huſband die, and the wife, before the rent becomes due, marries again, ſuch ſecond huſband is entitled to the rent.

18. A perſon demiſing land for *life* or *years* at an annual rent, afterwards enters on the ſaid premiſes, and takes the profits; by this act the whole rent is diſcharged, and ſhall continue ſuſpended while he holds the ſame.

19. If a perſon having a leaſe for years at a reſerved rent, aſſign over the ſame, and give his aſſignee a *releaſe of all demands*, it will be an extinguiſhment of ſuch reſerved rent; but a reſerved rent incident to a reverſion is not barred by ſuch releaſe.

20. If a parſon let his glebe-lands to a lay-man, the tenant ſhall pay the parſon tithe of that land, beſides the reſit; for the tithe is his property of common right.

21. If a man make a leaſe for years, reſerving rent *generally*, without ſaying to whom, the law will deem ſuch rent to be paid to the perſon who has the reverſion.

22. Tenants kept out of their premiſſes, by rebellion, civil diſcord, or other inevitable accidents, muſt, notwithſtanding, pay their rent; nor can they be relieved in equity. Vide poſt pl. 26.

23. If a man let lands on a leaſe, reſerving a rent, the leſſee is liable in an action of *debt* for the rent, although he never entered on the demiſed premiſſes; for the rent accrues from the leaſe, which is the *contract*, and not from the *occupation*; alſo he is liable to an action of *covenant* before he takes actual poſſeſſion. Dougl. 461.

24. If a leſſee grant an under-leaſe of a part of his term, the original leſſor cannot ſue the *under-leſſee* in an action of covenant for rent due to him from the leſſee to whom he demiſed the premiſſes; but if the under-leaſe had been for the whole term demiſed, it would then be conſidered as an *aſſignment*, and not as an *under-leaſe*, and the action would be maintainable. Holford *v.* Hatch. Eaſter Term 19 Geo. 3. Dougl. 185.

25. If a landlord give his tenant notice to quit, *or* pay ſuch a rent, and the tenant holds over, the landlord may Loft 153. 1 Term Rep. 53.

bring an action for use and occupation, and shall recover the rent specified in the notice.

1 Term Rep. 310.

26. Lessee covenants to pay rent and to repair, with express exception of casualties by fire, he is liable upon the covenant for rent, though the premises are burnt down, and not rebuilt by the lessor after notice.

27. By the 8 *Ann. c.* 14. "No goods upon any tene- "ment leased shall be taken by any execution, unless the "party at whose suit the execution is sued out, shall, be- "fore the removal of such goods, pay to THE LANDLORD "of the premisses, or his *bailiff*, all money due for rent "on the premisses, provided the arrears do not amount to "more than *one year's rent:* And in case the arrears shall "exceed one year's rent, then the party, paying to the "landlord or his bailiff one year's rent, may proceed to "execute his judgment: And the sheriff is required to "levy and pay to the plaintiff as well the money paid for "rent as the execution money." And it hath been determined that an execution on a judgment of nonsuit is an execution within this statute (*a*); and an action on the case will lie against the sheriff for taking the goods without leaving the year's rent (*b*). But the ground landlord of a house is not entitled to a year's rent on an execution against a under-lessee (*c*), and the landlord must demand the arrears before the goods are removed, or it will be too late (*d*).

(*a*) 2 Wils. 140.

(*b*) Dougl. 665.

(*c*) Stra. 787.

(*d*) B. R. H. 255.

28. By 11 *Geo.* 2. *c.* 19. § 15. "Where any tenant for "life shall die on or before the day on which any rent was "reserved upon any demise which determined on the "death of such tenant for life, the executors or admini- "strators of such tenant for life may, in an action on the "case, recover of the *under-tenants*, if such tenant for life "die on the day on which the same was made payable, the "whole; or if before such day, then a proportion of such "rent, according to the time such tenant for life lived of "the last year, or quarter, or other time in which the said "rent was growing due, making all just allowances."

1 Peere Wms. 392. Salk. 65. 4 Bac. Abr. 352.

II. *At what Place Rent is to be paid.*

Co. Lit. 201. 2 Bl. Com. 43. 4 Co. 73. Cro. Eliz. 462. Dyer 87.

29. RENT is regularly due and payable *upon the land* from whence it issues, if no particular place is mentioned in the reservation; but in the case of the king the payment must be either to his officers at the *exchequer*, or to his receivers in the country.

30. If

30. If a leſſee, or tenant for years, be bound in an obligation for the payment of his rent preciſely at a day, it is his duty to ſeek out the leſſor, or landlord, and tender him the rent; but if the bond be to perform the covenants in the leaſe, he may then tender his rent on the land, unleſs ſome other particular place be mentioned for the payment thereof; and the demand in ſuch caſe muſt be made at the particular place of the land, where by the terms of the leaſe the rent is appointed to be paid.

III. *At what Time Rent becomes due.*

31. RENT, in ſtrictneſs, is demandable and payable before the time of *ſun-ſet* of the day whereon it is reſerved, though ſome have thought it not abſolutely due till *midnight*: For it is ſaid, that if the leſſor die before midnight, his *heirs*, and not his *executors*, ſhall have the rent. On a leaſe for a certain number of years, rendering ſuch a rent to be paid by equal portions during the *term*, it ſhall be paid yearly, though that word be omitted: So if made payable at the uſual feaſts, without ſaying which, it ſhall be conſtrued at *Michaelmas* and *Lady-day*; or to be paid *quarterly*, it ſhall be paid every quarter, though the quarter do not end at the uſual feaſts; for where there are ſpecial days limited for the payment of rent in the leaſe, the rent muſt be computed according to the day of payment thereof, and not according to *the holding* thereof; but where the reſervation is general, as *half-yearly*, or *quarterly*, and no ſpecial days mentioned, then the half year or quarter muſt be computed according to *the holding*.

2 Bl. Com. 43. Ander. 253. 1 Saund. 287. 1 Ch. Prec. 555. 2 Roll. Abr. 449. 1 Sid. 116.

32. Every quarter's rent is conſidered in law as a ſeveral debt from the leſſee to the leſſor, for which the leſſor may diſtrain, or bring diſtinct actions of debt for each quarter's rent due and in arrear.

33. On a demiſe, rendering rent at *Michaelmas*, or ſo many days after, the leſſee is not bound to pay it until the laſt day, which is the legal time of payment; but he may *pay* or *tender* at any time on *Michaelmas-day*, or before the day's elapſe, and the leſſor ought to accept it. On a leaſe with a clauſe "that if the rent be behind, or unpaid for "the ſpace of *fifteen days* (more or leſs) after any of the "*feaſt days*, then ſuch leaſe to be void;" in this caſe, if the time limited be *fifteen days*, the tenant ſhall have *thirty days* after any of the ſaid *feaſts* to ſave his leaſe and pay his

10 Co. 127. Vide ante ſ. 14. Cro. Jac. 227. Yelv. 167.

rent; but if it be "that if the rent be behind, or unpaid "for the ſpace of fifteen days *next after* either of the ſaid "feaſt days or days of payment," in ſuch caſe the leſſee or tenant has but *fifteen days* only allowed him.

34. In payment of rent at a certain day, the leſſee or tenant has all that day, and *until night*, to pay the ſame; but if the rent is a large ſum, he ſhould have it in readineſs *before ſun-ſet*, that the leſſor or landlord may have *day-light* enough to count it by; for he is not obliged to take it by *candle-light*.

35. The tenant may tender his rent on any part of the premiſſes to his landlord on the laſt day of payment; which tender will ſave him the condition of his leaſe, though it is not the moſt *notorious* place.

IV. *Of the Demand of Rent.*

Goodright *v.* Caten Mich. 21 Geo. 3. Dougl. 485. Co. Lit. 201. Cro. Jac. 145. 5 Com. Dig. 430.

36. An actual demand of rent is indiſpenſably neceſſary, before a landlord can *enter* the premiſſes for the *non-payment* of it, unleſs the neceſſity of ſuch demand is waived by the expreſs agreement of the tenant, and unleſs by ſtatute 4 *Geo.* 2. *c.* 28. § 2. where ſix months rent is in arrear, and there is not a ſufficient diſtreſs on the premiſſes: For in all caſes of *a ſubject* where an eſtate is upon condition to be void for non-payment of rent, the condition will not be broken if the rent be not demanded.

Hob. 207. Hutton 13. Moor 883. 2 Roll. Abr. 426. 4 Bac. Abr. 353.

37. But where the remedy for the recovery of the rent is by *diſtreſs*, and not by *re-entry for non-payment*, there needs no demand previous to the diſtreſs, although the tenant has agreed that if the rent be behind, being *lawfully demanded*, that the leſſor may diſtrain; for the leſſor notwithſtanding ſuch clauſe may *diſtrain* when the rent becomes due.

38. A man making a leaſe for a certain number of years, at a rent payable to him and his heirs, on condition that, if the rent be behind, or unpaid for the ſpace of *forty days* after the day appointed for payment thereof, that then the leſſor or landlord, and his heirs, are to re-enter; and after *demand* made of ſuch rent by the leſſor or landlord, *he* dies, and his heir, in conſequence of the condition, re-enters ſuch re-entry is lawful: But had the leſſor or landlord died *after* the *feaſt day*, and before the *forty days*, and had not *demanded* the rent, and his heirs had demanded the ſame on the *fortieth day*, and, on non-pay-ment, had entered, in ſuch caſe the re-entry would not have been lawful.

39. If

39. If a leſſor or landlord wiſh to take advantage of a re-entry for non-payment of rent, the perſon who demands the ſame muſt be careful not to demand a penny more or leſs than what is due: He muſt alſo ſhew the certainty of the rent, and when due, or ſuch demand is not good; nor will a re-entry be given, unleſs the demand be preciſely and diſtinctly followed.

V. *Tender and Acceptance of Rent.*

40. A TENDER is an offer to pay a *debt*, or to perform a *duty*; and if *refuſed*, may be pleaded in bar of any action for not payment or non-performance; but it is not enough for the perſon who intends to make a tender, to ſay "I am ready to pay the debt," or "to perform the duty;" for he muſt make an actual offer to pay the one or perform the other. A tender ſhould be in the *current coin* of the kingdom; although a tender in *bank notes* is good, if not ſpecially objected to on that account at the time (*a*): It ſhould alſo be of the whole rent due, without any deduction of taxes or aſſeſſments, or any other charge whatſoever: But by the land-tax act (*b*) the tenants are required to pay ſuch ſums of money as ſhall be rated on the premiſſes, and to deduct ſo much of the ſame out of their rents as the landlord ought to have paid; who is directed to allow the ſame upon the receipt of the rent; ſo that the land-tax receipts may now be *tendered* in part payment. The landlord of a term, if he accept the rent ſo tendered, ſhould ſee that the money is not bad, or deficient in weight, for if he *accept* it, he thereby bars himſelf from any remedy *by re-entry*.

5 Bac. Abr. 1.

1 Leon. 71.
2 Lev. 209.
3 Lev. 104.
12 Mod. 353.

(*a*) So determined in Hilary Term 30 Geo. 3. in the Caſe of Wright *v.* Read.

(*b*) 30 Geo. 2. c. 3. ſ. 15.

41. ACCEPTANCE is a taking in good part, and as it were an agreeing to ſome act done before, which might have been undone and avoided if ſuch acceptance had not been made: Thus although a leaſe may be made *voidable* by the latches or default of the leſſee, in not paying his rent according to the covenants therein contained, yet it can only be rendered void by the act of the leſſor, that is *by his entry*; but if the leſſor after ſuch non-payment at the day, and before re-entry, *accept* the rent, that which was before voidable becomes by ſuch acceptance a good leaſe. So alſo if a leſſor once accept rent from the aſſignee of the term, knowing of the aſſignment, he cannot afterward bring an action of *debt* againſt the leſſee for rent due after the aſſignment; the leſſor, however, or his aſſignee, may bring an

Termes de la Ley. p. 6.

Co. Lit. 211.
Cro. Eliz. 553. 572.
1 Roll. Abr. 475.
Cro. Jac. 398.

action of *covenant* againſt the firſt leſſee on his covenant for payment of rent.

42. A leaſe, with a proviſo that in caſe of non-payment of the rent the leſſor or landlord may re-enter, in this caſe, if the leſſor or landlord diſtrain, he loſes his right of re-entry; but he may accept the rent of the leſſee or tenant, and yet re-enter: But if he receive the ſucceeding quarter's rent, he cannot then re-enter; for this act of the leſſor or landlord purges the leſſee or tenant of his breach, and re-eſtabliſhes his leaſe.

43. On a leaſe conditioned that the leſſee or tenant ſhall do no waſte, if he commit waſte, and the leſſor or landlord afterwards accept the rent, he waives his right of re-entry. If it had been conditioned that if he committed waſte his eſtate ſhould ceaſe, in that caſe, if the leſſee or tenant commit waſte, no *acceptance* of the rent afterwards will make the leaſe good.

Doe on the demiſe of Cheney *v.* Batten. Hilary 15 Geo. 3. Cowp. 243.

44. The mere acceptance of rent by a landlord, for occupation ſubſequent to time when notice to quit expired, is not of itſelf a waiver on the part of a landlord of ſuch notice, but it is to be left to the jury, *quo animo*, the rent was received.

By Aſton and Willes Juſtices ibid. p. 247.

45. Acceptance of ſingle rent is a waiver of the double rent given by the ſtatute 4 *Geo.* 2. *c.* 28.; and acceptance of rent after the forfeiture of the leaſe, by the ſame ſtatute, ſeems to have been held a waiver of ſuch forfeiture, for it is a penalty.

Goodright on the demiſe of Walter *v* David. Eaſter 18 Geo. 3. Cowp. 803.

46. If a leſſee covenant not to underlet, without the conſent of the leſſor, under hand and ſeal, with power of re-entry, in a caſe of a breach; *acceptance* by the leſſor of the rent due after the condition broken, with full notice, is a waiver of the forfeiture.

Roe *v.* Harriſon Eaſter Term 28 Geo. 3. 2 Term Rep. 425.

47. The leſſor's receiving rent after the leaſe has become forfeited, is no waiver, unleſs the forfeiture were known to him at the time.

VI. *Of Non-payment of Rent.*

48. On the non-payment of rent at the day it is due, the law hath furniſhed LANDLORDS with ſeveral methods of recovering it, according to the circumſtances of each caſe. The moſt uſual methods are, 1ſt. By *diſtreſs*, of which we ſhall treat in the enſuing chapter. 2d. By action of debt, for breach of the expreſs contract.

49. DEBT lies, by the common law, for arrears of rent reſerved on a leaſe for years or at will: So alſo it lies after entry for a forfeiture on condition broken, to recover the rent due before: So alſo if the leaſe be with a *nomine pœnæ*, it lies to recover the *penalty*. By 32 *Hen.* 8. *c.* 37. debt lies by an executor or adminiſtrator of any perſon ſeiſed of a rent-ſervice, rent-charge, rent-ſeck, or fee-farm rent, in fee, in tail, or for life of another, againſt him that ought to pay the ſame, his executor or adminiſtrator. By 8 *Ann c.* 14. any perſon having any rent due on any leaſe for lives, may bring debt for the ſame, although the leaſe for life be continuing, in the ſame manner as if due on a leaſe for years, which they could not do at common law: And by 8 *Ann. c.* 14. and 5 *Geo.* 3. *c.* 17. action of debt may now be brought at any time to recover even a freehold rent on a leaſe for life, *&c.* Theſe actions lie, though the tenant never entered on the premiſſes; but they cannot be brought in the court of conſcience in *London*, nor in the court of requeſts for the *Tower hamlets*: Alſo by 11 *Geo.* 2. *c.* 19. where the demiſe is by *parol*, or written *agreement*, and not by *deed*, the landlord may recover in an action *on the caſe* a reaſonable ſatisfaction for the uſe and occupation of the premiſſes ſo held and enjoyed (*a*).

Co. Lit. 47. 1 Sid. 401. 4 Co. 49.

Co. Lit. 162. 1 Roll. Abr. 595.

2 Com. Dig. 636.

3 Bl. Com. 232.

Dougl. 245.

(*a*) See the act poſt p. 8. ſ. 12.

50. Bankruptcy is a plea to an action of *debt* on the *reddendum* of a leaſe; But *quære*, whether it is to an action of *covenant* for rent.

1 Term Rep. 86. 91.

VII. *Of Notice to quit.*

51. ALL DEMISES, where *no certain term* is mentioned, are held to be tenancies from *year to year*, which neither party can determine without reaſonable notice to the other. This notice in moſt caſes is *ſix months* preceding that part of the year when the tenancy commenced, and therefore it hath been holden that *half a year's notice* to quit poſſeſſion muſt be given to ſuch tenant before the landlord can maintain an *ejectment*; and it muſt be *half a year*'s notice, for *ſix months* notice is not ſufficient (*b*).

Mr. Serjeant Runnington's Treatiſe on ejectments. p. 23. 2 Bl. Com. 147. Throgmorton *v.* Whelpdale B. R. Hilary 2 Geo. 3.

(*b*) Per Buller Juſtice. 1 Term Rep. 163.

52. But if the tenant has attorned to ſome other perſon, or done ſome act diſclaiming to hold as tenant, or where the poſſeſſion of the tenant is *adverſe*, in theſe caſes *no notice* is neceſſary: And the ſame law will apply to the executor of ſuch tenant.

Foſter *v.* William's. Cowp. 622. 3 Wilſ. 25.

Bury Aſſiſes. 1775.

53. But after the expiration of A LEASE for a *certain* term, the tenant continuing in poſſeſſion is deemed a treſpaſſer, and therefore an ejectment may be brought without any notice to quit; for the leaſe ending on a *preciſe day*, or at a particular period, both parties are equally apprized of the determination of the term; and it is of courſe at an end, unleſs the parties come to a freſh agreement.

1 Term Rep. 162.

Whatley *v.* Hawkin's. Mich 14 Geo. 3. and Heech *v* Hale. Dougl. 21 to 23.

54. So a mortgagee need not give any notice to quit, if he mean only to get into the receipt of the rents and profits, even though the mortgage be ſubſequent to the leaſe; but in ſuch caſe he will not be ſuffered to turn the tenant out of poſſeſſion.

Birch *v.* Wright. Mich. Term 27 Geo. 3. 1 Term Rep. 380.

55. But where a tenancy from year to year commences previous to the premiſſes being mortgaged, or to a grant of the reverſion, the mortgagee or grantee muſt give the tenant *ſix months* notice to quit before the end of the year.

Determined in Eaſter Term 1779, B. R.—See Doe *v.* Jackſon. Dougl. 175.

56. A notice in the alternative is ſufficiently valid to found an ejectment upon, *viz.* to quit at the end of ſix months OR pay double rent—ſo alſo, a ſecond notice to quit at the expiration of the leaſe delivered to the tenant after the expiration of a firſt notice to quit on a ſubſequent day, *or* pay double rent, has been held to be no waiver of the firſt notice or of the double rent which has accrued under it.

Meſſenger *v.* Armſtrong in B. R. Mich. Term 26 Geo. 3. 1 Term Rep. 54.

57. At a meeting of eleven of the judges (among whom were Lord MANSFIELD and Lord Chief Juſtice DE GREY, a conference was had on the motion of Mr. Juſtice GOULD what notice was neceſſary to be given to a leſſee *at will* to quit poſſeſſion before a leſſor at will could have title to bring an ejectment, and recover poſſeſſion; and it was their unanimous opinion, that in all caſes of *leaſes at will* of farms of *land* to hold from year to year, and ſo for as long time as both parties ſhall pleaſe, that before the landlord can have title to bring ejectment againſt the tenant at will, he muſt give the tenant *half-a-year's notice* to quit poſſeſſion of the farm: And they held the like law as to *houſes* (*a*) let at will, unleſs there be ſome uſage or cuſtom, in the place or diſtrict where the houſe is ſituate to give a *ſhorter* or other kind of notice to quit.

(*a*) Confirmed by Aſhhurſt Juſtice. 1 Term Rep. 162.

Gulliver on the demiſe of Tailier *v.* Burr. Eaſter 6 Geo. 3. 1 Bl. Rep. 596.

58. On a demiſe from year to year commencing on the 10th of *October*, the tenant died on the 27th of *Auguſt* following. The landlord gave notice on the 9th of *September* to the executor to quit the premiſſes at the *end of the term*. The court

court held clearly that, in a common caſe it would not be ſufficient notice; and Lord *Mansfield* ſtrongly inclined that as regular notice had not been given the executor might, in this caſe hold the farm *another year*.

59. Where one in remainder, after the expiration of an eſtate for life gave notice to the tenant to quit on a certain day, and afterwards accepted half a year's rent, ſuch acceptance, being only evidence of a holding from *year to year*, is rebutted by the *previous notice to quit*, and therefore *ſuch notice* remains good, although it was not *half a year's notice*, ending on the day the tenancy commenced.

Murgatroyd's Caſe before Mr. Juſtice Blackſtone, at York Aſſiſes, 1774.

60. A tenant from year to year may prove, in an action of ejectment, that the time the term commenced was different from the time to quit mentioned in the notice; but a notice to quit at *Lady-day* ſhall be admitted as *prima facie* evidence of a holding from *Lady-day* to *Lady-day* (*a*), until the contrary be ſhewn; and ſo from any other of the *feaſt days*, or other commencement of a demiſe.

Duncome's Caſe before Lord Mansfield at Guildhall.

(*a*) Vide ante, and 2 Bl. Rep. 1224. Penruddock v. Harris, before Mr. Baron Eyre at Dorcheſter Aſſizes, 1784.

61. A perſon took a houſe under a parol demiſe on the 11th *May*, 1781, the rent to commence from *Midſummer* following. On the 26th *March*, 1785, the tenant was ſerved with a notice to quit on the 29th *September* following. The queſtion was, Whether the rule which requires *half a year's notice* to be given to a tenant at will, alſo requires that ſuch notice ſhould *expire at the end of the year*; and the court held that it muſt ſo expire with the end of the year.

Right v. Darley, Eaſter Term 26 Geo. 3.

62. The caſe of *lodgings* depends upon the *particular contract* under which they are taken, and is an exception to the general rule: The agreement may be for a month, or leſs time, and then a much ſhorter notice to quit would be ſufficient, where the tenant has *held over* the time agreed upon.

1 Term Rep. 163.

63. Where an infant becomes intitled to the reverſion of an eſtate leaſed from year to year, he cannot eject the tenant without giving the ſame notice as the original leſſor muſt have given.

Baker v. White. 2 Term Rep. 159.

64. By the cuſtom of *London* a tenant at will under the yearly rent of *forty ſhillings* ſhall not be turned out without a quarter's warning; and a tenant paying above forty ſhillings yearly is not to be turned out unleſs half a year's warning be given: and in all caſes when the rent is made payable *half yearly* there muſt be half a year's notice to quit.

Bac. Abr. 689.

VIII. *Of holding over, and double Rent.*

If the tenant after notice from his landlord to quit, hold over, he shall be liable to pay *double rent.*

65. By 4 *Geo.* 2. *c.* 28. "If any tenant for life or "years, or other person who shall come into possession by, "from, or under him, shall wilfully hold over any lands "after the determination of such term, and after demand "made, and notice in writing given for delivering the pos- "session thereof, he shall, for the time that he shall so "hold over, pay *double the yearly value* thereof; to be re- "covered by action of debt in any court of record."

Tenant gives notice to quit and afterwards holding over, becomes thereby liable to pay *double rent.*

66. By 11 *Geo.* 2. *c.* 19. § 18. "If any tenant shall "give notice of his intention to quit the premisses at a time "mentioned in such notice, and shall not accordingly de- "liver up the possession at the time in such notice con- "tained, he, his executors or administrators shall from "thenceforward pay *double rent*; to be recovered in like "manner as the single rent."

2 Bl. Rep. 1075.

67. The notice to quit under these statutes, must be previous to the expiration of the lease.

1 Bl. Rep. 533.

68. A *parol notice* to quit, by a tenant on a *parol lease*, is sufficient within the meaning of the statute 11 *Geo.* 2. *c.* 19.

Loft Rep. 276.

69. If an action be brought on the statutes for double rent, for two years holding over, the jury may find for so much as, upon the evidence, the tenant appears to have over held beyond the term, provided they find not beyond what is laid in the declaration.

Dougl. 668.

70. In an action on the statute 11 *Geo.* 2. *c.* 19. for double rent, if the plaintiff declare on a demise for *three years*, and prove a lease from *year to year*, it is a fatal variance.

Form of Notices to quit Premises.

A landlord's notice to a tenant.

71. Sir, I do hereby give you notice to quit the house and garden you hold of me, situate at , in the county of , at the yearly rent of pounds *per* year, on or before *Midsummer-day* next.

Dated the day of , 1787.

Yours, *&c.*

I. H. landlord of the said premises.

To *T. T.* the tenant thereof. *(a)*

(*a*) Note: The notice or warning to quit must be in writing, and it must be directed to the tenant who is in possession of the premisses, but notices need not be stamped.

A tenant's notice to his landlord to quit his premiſes.

72. SIR, I hereby give you warning of quitting your houſe on or before *Lady-day* next, of which be pleaſed to take notice. Dated the day of , 1787.

From your humble ſervant,

D. C.

To Mr. *G. M.* the landlord of the premiſes.

A warning from a landlord to his tenant to quit poſſeſſion: in the common form.

73. I DO hereby give you notice to quit poſſeſſion of *(here deſcribe the premiſes particularly, whether leaſe, lodgings, chambers; farm or lands, &c.)* ſituate in the pariſh of , now in your own poſſeſſion, or in the poſſeſſion of , *(as the caſe is)* which you hold at will, or by virtue of an agreement or leaſe, *(as the caſe is.)* Dated the day of . Witneſs my hand this day of , 1787.

A. B. landlord, or *C.* agent for the ſaid Mr. *A. B.* legally authorized.

To Mr. *J. S.* the tenant, Theſe.

In another form.

74. Mr. *J. H.* I hereby give you notice to deliver up the poſſeſſion to Mr. *T. K.* of the meſſuage or dwelling-houſe, with the appurtenances, which you rent of me in , in the county of , on *Lady-day* next.

Dated this day of , 1787.

Yours, *&c.*

D. C.

To Mr. *J. H.* the tenant, Theſe.

A notice to a tenant to deliver up poſſeſſion; or, on refuſal, to pay double rent. (a)

75. To Mr. *F. G.* I hereby demand of you, and give you notice that you are to deliver up the poſſeſſion of the houſe with the appurtenances, in the pariſh of , in the county of , now in your own occupation, to Mr. *A. B.* your landlord, at *Lady-day* next enſuing the date hereof; and in default of your compliance therewith the ſaid *A. B. doth* and will inſiſt on your paying unto him from thenceforward, for the ſame, the yearly rent or ſum of pounds, being double the former rent or value thereof, for ſo long time as you ſhall detain the key, and keep poſſeſ-

(a) This notice is under the ſtatute 4 Geo. 2. c. 28.—See Douglas 283 and 624, the Caſes of Moſs v. Gallimore, and Bradbury v. Wright.

ſion

ſion of the ſaid premiſes over the ſaid notice. Given under my hand this day of , in the year of our Lord .

N. M. agent for the ſaid Mr. *A. B.* legally authorized.

To Mr. *F. G.* the tenant, Theſe,

CHAPTER THE SEVENTH.

The Law of Diſtreſs for Rent.

1. A DISTRESS is the taking of a perſonal chattel out of the poſſeſſion of the wrong-doer into the cuſtody of the party injured, to procure a ſatisfaction for the wrong committed. It may be taken for neglecting to do ſuit in the lord's court, *(a)* or other perſonal ſervice *(b)*; for amerciaments in a court leet, but not in a court baron; *(c)* where a man finds beaſts wandering in his grounds *damage-feaſant*, that is doing him hurt or damage by treading down his graſs or the like; and for ſeveral duties and penalties inflicted by divers acts of parliament *(d)*. But the moſt uſual injury for which a diſtreſs may be taken, and to which our preſent enquiries will be entirely confined, is that of non-payment of rent, for, although by the common law this remedy was not incident to every ſpecies of rent, yet, now by the 4 *Geo.* 2. *c.* 28. all material diſtinction between them is aboliſhed, and we may lay it down as an univerſal principle that A DISTRESS may now be taken for any kind of rent in arrear, the detaining of which, beyond the day of payment is an injury to him that is intitled to receive it: And we ſhall conſider,

(a) Bro. Abr. 25.
(b) Co. Lit. 46.
(c) Brownl. 36.
(d) 7 Ann c. 10. for aſſeſſments made by commiſſion of ſewers: and by 43 Eliz. c. 2. for the poor's tax.

1. *Who may or may not diſtrain.*
2. *Of what things a diſtreſs may be taken.* —— —— —— 8
3. *At what time the diſtreſs ſhall be taken.* 8
4. *Where the diſtreſs ſhall be made.* 8
5. *How a diſtreſs ſhall be diſpoſed of by the common law.* 8
6. *How the goods diſtrained ſhall be diſpoſed of* BY STATUTE. 9
7. *Of irregularity and exceſſive diſtreſs.* 9
8. *Of reſcuing a diſtreſs; and* 9
9. *Of the landlord's remedy where there is not ſufficient to diſtrain.* 9

10. Precedents &c. —— —— —— —— 9

I. *Who may or may not diſtrain for Rent.*

2. By the common law the executors or adminiſtrators of tenants in fee-ſimple, fee-tail, and terms of lives of rents ſervices, rent charges, rents ſeck and fee farm had no remedy to recover the arrears of ſuch rents as were due in the life-time of the teſtator or inteſtate, nor could the heir or reverſioner diſtrain or have any action for the ſame, it is therefore enacted, by 32 *Hen.* 8. *c.* 37. "That the "executors and adminiſtrators of every ſuch perſon to "whom any ſuch rent or fee-farm ſhall be due and not "paid at the time of his death, to diſtrain for the ar-"rears of all ſuch rents and fee-farms upon the lands, "tenements or hereditaments which were charged with "payment of ſuch rents and chargeable to the diſtreſs of "the ſaid teſtator ſo long, as the ſaid lands, *&c.* ſhall con-"tinue, remain and be in the ſeiſin or poſſeſſion of the "tenant in demeſne who ought to have paid the ſaid rent."

Executors or adminiſtrators may diſtrain for rent due in the life-time of the teſtator or inteſtate.

3. By 32 *Hen.* 8. *c.* 37. *ſ.* 7. "Any huſband having "in right of his wife any eſtate in fee-ſimple, fee-tail, or "for term of life of, or in any rents, may after the death "of his wife, or his executor or adminiſtrator have an ac-"tion of debt againſt the tenant who ought to have paid "the ſame his executor or adminiſtrator, or alſo the ſaid "huſband, after the death of his wife, may *diſtrain*, for "the ſaid arrears in the ſame manner and form as he "might have done if his ſaid wife had been then living." And by the ſame ſtatute the ſame power is given to tenants *per autre vie* to diſtrain or bring debt for the rent arrear during the life of *ceſtui que vie*.

A huſband who is landlord or leſſor of lands in right of his wife or his perſonal repreſentative may diſtrain after her death, &c.

Co. Lit. 351. b.

4. By 17 *Car.* 2. *c.* 7. In all caſes, "Where the value "of the cattle diſtrained ſhall not be found to be of the "full value of the arrears diſtrained for; the party to "whom ſuch arrears are due, his executors or adminiſtra-"tors may diſtrain again for the reſidue of the ſaid arrears."

Landlords may diſtrain twice for one rent.

5. By 8 *Ann c.* 14. *ſ.* 6. "Perſons having any rent "in arrear or due, upon any leaſe for life or lives or for "years or at will ended or determined may *diſtrain* for "ſuch arrears after the determination of the ſaid reſpec-"tive leaſes in the ſame manner as they might have done "if ſuch leaſe had not been determined." PROVIDED that "ſuch diſtreſs be made within ſix months after the deter-"mination of the leaſe, and during the continuance of "the landlord's title and tenant's poſſeſſion.

Landlords or leſſors may diſtrain within ſix months after the determination of the term.

6. By

A meſne landlord may diſtrain under a new chief leaſe, although the under leaſes were not ſurrendered.

6. By 4 *Geo.* 2. *c.* 28. *ſ.* 6. "CHIEF LEASES for *life* or "*years* may be renewed without the UNDER LEASES which "are derived out of the ſame, being ſurrendered, and "the like *diſtreſs* or entry may be had as if the former "chief leaſe had been ſtill kept on foot and continued, or "the under leaſes had been renewed under ſuch new prin-"cipal leaſe."

Landlords may diſtrain and ſell goods fraudulently carried off the premiſes.

7. By 11 *Geo.* 2. *c.* 19. *ſ.* 1. "In caſe any tenant or "leſſee for life or lives, term of years, at will, at ſuffer-"ance, or otherwiſe, of any meſſuages, lands, tenements, "or hereditaments, upon the demiſe or holding whereof "any rent is or ſhall be reſerved, due, or made payable, "ſhall fraudulently, or clandeſtinely convey away, or "carry off or from ſuch premiſes, his or her goods or "chattels to prevent the landlord or leſſor, from diſtraining "the ſame for arrears of rents ſo reſerved, due, or made "payable; it ſhall be lawful to and for every landlord or "leſſor, in *England*, or any perſon by him or her for that "purpoſe lawfully empowered, within the ſpace of *thirty* "*days* next enſuing, ſuch conveying away or carrying "off ſuch goods and chattels to take and ſeize ſuch goods "and chattels wherever the ſame ſhall be found as *a diſtreſs* "for ſuch arrears of rent; and the ſame to ſell or other-"wiſe diſpoſe of in ſuch manner as if the ſaid goods and "chattels had actually been diſtrained by ſuch leſſor or "landlord, in and upon ſuch premiſes for ſuch arrears of "rent.

The landlord cannot ſeize goods ſo removed if ſold to perſons not privy to the fraud; but he ſhall recover double the value of the goods ſo conveyed away: or if the value of the goods do not exceed *fifty pounds* he may apply to a juſtice of the peace.

8. "PROVIDED ALWAYS, that no landlord or leſſor or any "other perſon entitled to ſuch arrears of rent ſhall take or "ſeize any ſuch goods or chattels *as a diſtreſs* for the "ſame which ſhall be ſold *bona-fide*, and for a valuable con-"ſideration before ſuch ſeizure made to any perſon not "privy to ſuch fraud.—BUT by the ſame ſtatute, if any "ſuch tenant or leſſee ſhall ſo fraudulently remove his "goods, he, and every perſon aiding therein ſhall forfeit "and pay to the landlord from whoſe eſtate ſuch goods "were fraudulently carried off, *double the value* of the goods "ſo conveyed away to be recovered by action of debt in "any of the courts of *Weſtminſter*, Great Seſſion of *Wales*, "&c. — AND where the goods and chattels ſo carried "off ſhall not exceed the value of *fifty pounds* the land-"lord or his bailiff, ſervant or agent may exhibit a com-"plaint againſt ſuch offender before two or more juſ-"tices

" tices of the peace of the ſame county, reſiding near " the place where ſuch goods and chattels are remov- " ed, or near the place where the ſame were found, not " being intereſted in the lands or tenements whence ſuch " goods were removed, who may ſummon the parties con- " cerned, examine the fact and all proper witneſſes upon " *oath*, or *affirmation*, and in a *ſummary way* determine whe- " ther ſuch perſon be guilty of the offence, and to in- " quire into the value of the goods and chattels ſo fraudu- " lently carried off or concealed, and upon *full proof* of the " offence by order under their hands and ſeals, ſhall ad- " judge the offender to pay double the value of the ſaid " goods and chattels to ſuch landlord or landlords, his, or " her bailiff, ſervant or agent, at ſuch time as the ſaid " juſtices ſhall appoint, and in caſe the offender, having " notice of ſuch order, ſhall reſign or neglect ſo to do, " may and ſhall by warrant under their hands and ſeals " levy the ſame by *diſtreſs* and *ſale* of the goods and chat- " tels of the offender, and for want of ſuch diſtreſs may " commit the offender to the houſe of correction, there to " be kept to hard labour for ſix months, unleſs the money " ſo ordered ſhall be ſooner paid.

Party aggrieved may appeal.

9. " PROVIDED ALSO, That any perſon may appeal to *the* " *next* General or Quarter Seſſions for the ſame county, " who ſhall hear and determine ſuch appeal, and give ſuch " coſts to either party as they ſhall think reaſonable, whoſe " determination therein ſhall be final.

Where there is a recogniſance the order ſhall not be executed until the appeal be determined.

10. " PROVIDED ALSO, That where the party appealing " ſhall enter into a *recognizance* with one or two ſufficient " ſurety or ſureties, in double the ſum ſo ordered to be " paid with condition to appear at ſuch General or Quar- " ter Seſſions, the order of the ſaid two juſtices ſhall not " be executed againſt him in the mean time.

A landlord having a right to diſtrain may break open houſes, &c. to ſeize goods fraudulently ſecured herein.

11. By 11 *Geo.* 2. *c.* 19. *ſ.* 7. " It is further enacted, " That where any goods or chattels fraudulently or clan- " deſtinely conveyed or carried away by any tenant or " leſſee his or her ſervant or other perſon aiding or aſſiſting " therein, ſhall be put, placed, or kept, in any houſe, " barn, ſtable, out-houſe, yard, cloſe, or place locked up, " faſtened or otherwiſe ſecured, ſo to prevent ſuch goods " or chattels from being ſeized and taken as a diſtreſs for " arrears of rent; it ſhall and may be lawful for the land- " lord or leſſor his or her ſteward, bailiff, receiver, or other

" perſon

" perſon empowered to take and ſeize, as a diſtreſs for rent, " ſuch goods and chattels (firſt calling to his or her aſ- " ſiſtance, the conſtable, headborough, borſholder, or " other peace-officer of the hundred, borough, pariſh, diſ- " trict, or place where the ſame ſhall be ſuſpected to be " concealed, who are hereby required to aid and aſſiſt " therein, and in caſe of a dwelling houſe, oath being alſo " firſt made before ſome juſtice of the peace of a reaſon- " able ground to ſuſpect that ſuch goods or chattels are " therein) in the day-time to break open and enter into " ſuch houſe, barn, ſtable, out-houſe, yard, cloſe, and " place; and to take and ſeize ſuch goods and chattels for " the ſaid arrears of rent, as he or ſhe might have done " by virtue of this or any former act if ſuch goods and " chattels had been in any open field or place."

Landlords may diſtrain when the demiſe is not by deed.

12. By 11 *Geo.* 2. *c.* 19. *ſ.* 14. " To obviate dif- " ficulties that may occur when the demiſes are not by " deed, it ſhall and may be lawful to and for the landlord " where the agreement is not by deed to recover a rea- " ſonable ſatisfaction for the lands, tenements or here- " ditaments, held or occupied by the defendant or defen- " dants, in an action on the caſe for the *uſe and occupation* " *(a)* of what was ſo held or enjoyed and if in evidence " on the trial of ſuch action any parol demiſe, or any " agreement (not being by deed) whereon a certain rent " was reſerved, ſhall appear, the plaintiff in ſuch action " ſhall not therefore be nonſuited, but make uſe thereof as " an evidence of the *quantum* of the damages to be reco- " vered."

(a) Actions for uſe and occupation cannot be maintained in the Court of Conſcience in London. Dougl. 244.

13. The *Lord of a manor* may diſtrain for rent, ſervice, or an amerciament in his leet, or for damage feaſant; a *commoner*, or a *tenant in ſufferance* may diſtrain the cattle of a ſtranger *damage feaſant*; and ſo may any perſon, claiming a rent either by preſcription or grant, for rent arrear.

14. By the ſtatute of uſes, the perſon to whoſe uſe any other man is enfeoffed of lands and tenements may diſtrain.

15. If ſheep are delivered to a ſingle woman to dung her land and ſhe marries, and the huſband commands the owner to take the ſheep off the land, who refuſes, the huſband may diſtrain them *damage-feaſant*.

16. If a perſon poſſeſſed of two hundred acres of open moor land ſells, fifty acres thereof, each party ought to incloſe

cloſe againſt the other, and if the cattle of one go into the land of the other, they may be diſtrained doing miſchief.

17. If a perſon make a gift in tail to another, reſerving fealty and a certain rent; and afterwards grant away the fealty, reſerving the rent and reverſion to himſelf; in this caſe he may diſtrain for the rent; for the grant of the fealty is void, as it cannot be reſerved from the reverſion.

18. Alſo if a rent be aſſigned to make a partition or an aſſignment of dower equal, he or ſhe to whom the rent is aſſigned may diſtrain for the ſame.

19. If a man ſeiſed in fee make a gift in tail or a leaſe for life, years, or at will, ſaving the reverſion to himſelf, with a reſervation of rent or other ſervices; the law gives the donee or leſſor, without any expreſs proviſion, remedy for ſuch rent or ſervices, by diſtreſs; but if the donor or leſſor reſerve not the reverſion, he cannot diſtrain of common right, but he may reſerve to himſelf a power of diſtraining, or the reſervation may be good to bind the leſſee by way of contract for the performance whereof the leſſee ſhall have an action of debt.

Lit. ſect. 214. Co. Lit. 142. Cro. Eliz. 636

Co. Lit. 47. 5 Co. 3. 2 Saund. 303.

20. If a termor grant or aſſign over all his term, rendering rent, he cannot diſtrain for it: So, alſo, if a man ſeiſed in fee, or for life, of a rent charge, after arrears incur, grant over the rent to another, he cannot diſtrain for theſe arrears, becauſe they are by the grant divided from the freehold of the rent.

2 Lev. 80. Co. Lit. 292. See Cooper's Caſe. 2 Wilſ. 375.

21. A ſheriff may diſtrain the goods of any man at any place within his county in another man's houſe or ground as well as the owner's.

4 Co. 50. Vaugh. 40. 1 Roll. Abr. 672.

22. A bailiff, where a lawful tender of rent has been refuſed, may not diſtrain without the command of the landlord; nor will ſuch a diſtreſs be juſtifiable if the tenant can ſupport the tender.

23. A mortgagee, after giving notice of the mortgage, to the tenant in poſſeſſion under a leaſe prior to the mortgage is intitled to the rent in arrear at the time of the notice as well as to what accrues afterwards, and he may *diſtrain* for it after ſuch notice.

Moſs v. Gallimore, Mich. 20 Geo. 3. Dougl. 279.

24. On a grant of a fee farm rent "without any deduc- "tion, defalcation or abatement for or in any reſpect "whatſoever," the grantee is intitled to receive the full rent without deducting the *land tax*; but he cannot *diſtrain* for a fee farm rent, unleſs the caſe is brought within the ſtatute of 4 *Geo.* 2. *c.* 28. *ſ.* 5.

Bradbury v. Wright, Hilary, 21 Geo. 3. Dougl. 624.

25. By the ſtatute 4 *Geo.* 2. *c.* 28. "All and every "perſon or perſons, bodies politic and corporate, ſhall "and may have the like remedy by *diſtreſs*, and by im- "pounding the ſame, as are given for other rents by the "ſaid ſtatute (*a*).

(*a*) Vide ante, Ch.

26. "AND ALSO in caſes of *rents ſeck*, *rents of aſſize* and "*chief* rents, which have been duly anſwered or paid for "the ſpace of *three years* within the ſpace of *twenty years* "before the firſt day of the then ſeſſion of parliament, or "ſhall be hereafter enacted, AND ALSO in caſes of rent re- "ſerved upon leaſe."

27. If a huſband leaſe his wife's land, and the wife dies without having had iſſue, the huſband cannot diſtrain, becauſe the reverſion goes to her heir.

Buckley v. Taylor, 2 Term Rep. 600.

28. If a trader, after committing an act of bankruptcy, take a houſe, and agree to pay half a year's rent in advance, where by the cuſtom of the country half a year's rent becomes due on the day on which the tenant enters; THE LANDLORD, after an aſſignment under the commiſſion and before the year expires, may *diſtrain* the goods on the premiſſes for half a year's rent; or if he buy the tenant's goods at a ſale under the commiſſion, he may retain the amount of the half year's rent.

II. *Of what Things a Diſtreſs may be taken.*

1. DISTRESSES may be made either for cattle, treſpaſſing and *doing damage*, or for non-payment of rent, or other duties.

2. Diſtreſſes for rent muſt be for rent in arrear; and therefore it may not be made on the ſame day the rent becomes due; for, if the rent be paid at any time of that day, while the man can ſee to count the money, the payment is good.

3. A diſtreſs cannot be made after tender of payment; for, if the landlord come to diſtrain the goods of his tenant for rent behind, the tenant may, before the diſtreſs, tender the arrears upon the land; and although the landlord have diſtrained, if the tenant before the impounding thereof tender the arrears, the landlord ought to detain the diſtreſs, and if he do not, the detainer is unlawful; but if the thing diſtrained be impounded, the tenant cannot take it out of the pound, although the tender be refuſed, or the diſtreſs made without cauſe; but he muſt replevy; for after impounding it, it is in the cuſtody of the law.

4. Diſtreſs

4. Diſtreſs for rent muſt be of a thing whereof a valuable property is in ſomebody, and therefore dogs, bucks, does, conies and the like, that are *feræ naturæ* cannot be diſtrained. Co. Lit. 47.

5. Things fixed to the freehold as part of the freehold, as furnaces, cauldrons, doors, windows, cannot be diſtrained: But if they are thoſe kind of fixtures, which, in *equity*, the tenant would be permitted to take away, *quere*, if they may not be diſtrained. Fixtures cannot be diſtrained.

6. By the ſtatute 2 *Will.* 3. *c.* 5. "Perſons having "rent arrear on any demiſe, leaſe, or contract, may ſeize "and ſecure any ſheaves, or cocks of corn, or corn loom, "or in the ſtraw, or hay being in any barn or granary, or "upon any hovel, ſtack or rick, or otherwiſe, upon any "part of the land charged with rent, and may lock up or diſ-"train the ſame in the place where found, in the nature of "*a diſtreſs*, ſo as the ſame be not removed to the damage "of the owner, out of the place where found and ſeized, "but be kept there (as impounded) till replevied or ſold." Corn or hay cut may be diſtrained for rent.

7. But by 11 *Geo.* 2. *c.* 19. *ſ.* 8. "Every landlord "or leſſor, his ſteward, bailiff, receiver or other perſon "empowered by him, may take and ſeize as a diſtreſs for "arrears of rent, any cattle or ſtock of his tenant feeding "or depaſturing upon any common appendant or appurte-"nant, or any ways belonging to all or any part of the "premiſes demiſed or holden. Cattle on commons may be diſtrained.

8. "And also, may take and ſeize all ſorts of corn and "graſs, hops, roots, fruits, pulſe, or other product what-"ſoever, which ſhall be growing thereon, or on any "part of the eſtate ſo demiſed or holden, as diſtreſs for "arrears of rent; and the ſame may cut, gather, make, "cure, carry, and lay up, when ripe, in the barn or other "proper place on the premiſes ſo demiſed or holden; and "in caſe there ſhall be no barn or proper place on the pre-"miſes ſo demiſed or holden, then in any other barn or "proper place which ſuch leſſor or landlord, leſſors or "landlords, ſhall hire or otherwiſe procure, for that pur-"poſe, and as near as may be to the premiſes—and in a "convenient time to appraiſe, ſell or otherwiſe diſpoſe of "the ſame, towards ſatisfaction for the rent for which "ſuch diſtreſs ſhall have been taken, and of the charges of "ſuch diſtreſs, appraiſement, and ſale, in the ſame man-"ner as other goods or chattels may be ſeized, diſtrained, "and diſpoſed of; and the appraiſement thereof to be "taken, when cut, gathered, cured, and made, and not "before. And corn or other grain growing may be diſtrained and taken when ripe; and lodged in the barn on the premiſes, or if there be no barn, removed.

But notice muſt be given to what place removed.

9. "PROVIDED ALWAYS, that notice of the place where "ſuch goods and chattels ſo diſtrained ſhall be lodged or "depoſited, ſhall, within the ſpace of one week after the "lodging or depoſiting thereof in ſuch place, be given to "the leſſee or tenant, or left at the place of his or her "abode.

And on tender of rent and coſts, ſhall be reſtored.

10. "AND IF after any diſtreſs for arrears of rent ſo "taken for corn, graſs, hops, roots, fruits, pulſe or "other product which ſhall be growing as aforeſaid, and "at any time before the ſame ſhall be ripe and cut, cured "or gathered, the tenant or leſſee, his or her executors, "adminiſtrators or aſſigns, ſhall pay or cauſe to be paid to "the leſſor or landlord, leſſors or landlords, for whom "ſuch diſtreſs ſhall be taken, or to the ſteward or other "perſon uſually employed to receive the rent of ſuch leſ-"ſor or leſſors, landlord or landlords, the whole rent "which ſhall be then in arrear, together with the full "coſts and charges of making ſuch diſtreſs, and which "ſhall have been occaſioned thereby; that then, and upon "ſuch payment, or lawful tender thereof actually made, "whereby the end of ſuch diſtreſs will be fully anſwered, "the ſame and every part thereof ſhall ceaſe, and the corn, "graſs, hops, roots, fruits, and pulſe, or other product ſo diſ-"trained, ſhall be delivered up to the leſſee or tenant, his "or her executors, adminiſtrators, or aſſigns."

11. By 11 *Geo.* 2. *c.* 19. *ſ.* 18. Tenants holding over, after they have given notice to quit, ſhall pay double rent, to be *levied*, *&c.* in the ſame manner as the ſingle rent might have been levied, *&c.*

Co. Lit. 47. 1 Mod. 104. 1 Lev. 96. Ld. Ray. 385. 2 Stra. 1228. Sed vide 3 Salk. 136. and Biſſet *v.* Caldwell, poſt. pl. 29.

12. No man can be diſtrained by the utenſils of his trade for rent, as beaſts of the plough, the axe of a carpenter, the books of a ſcholar, the materials for making cloth in a weaver's ſhop; for theſe the law protects under a preſumption that without them the tenant could neither be uſeful to others nor gain a livelihood for himſelf.

Co. Lit. 47. 3 Bulſt. 270. Cro. Eliz. 549. See 3 Burr. 1489.

13. A landlord may, in general, diſtrain whatever he finds on his premiſſes, though not the property of the tenant. But, for the benefit of trade and commerce, ſome things, when they belong to *third perſons*, are privileged from being diſtrained, as oxen of the plough, a horſe in a ſmith's ſhop, a horſe in an inn, ſacks of corn, meal in a mill, cloth or garments in a taylor's ſhop, a ſack of corn or meal in a market, goods on a wharf or in a warehouſe for exportation,

portation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, *&c.* But it has been determined, that a gentleman's chariot, ſtanding at a livery ſtable, may be diſtrained, for rent due from the ſtable-keeper to his landlord. So alſo a *race horſe*, ſtanding in a ſtable half a mile from the inn, may be diſtrained: And ſo may the houſehold furniture of lodger or an inmate. (*a*) If a horſe carries corn to a mill, and is tied at the mill door during the grinding of the corn, the horſe ſhall not be diſtrained; but cattle driving to a market, and by the way put into a paſture, may be diſtrained, unleſs they were ſo taken in by colluſion of the landlord.

Francis v. Wyat, Trin. Term 1498. 1 Black. Rep. 483. Barnes 472. 1 Black. 483. Cro. Eliz. 550. 2 Vent. 50. 2 Vin. 130. 2 Bac. Abr. 108. in notes. 3 Lev. 260. Pre. in Ch. 7. Co. Lit. 47.

14. Things diſtrained, *damage feaſant*, cannot be diſtrained for rent.

15. By the ſtatute 51 *Hen.* 3. *c.* 4. "No man ſhall be "diſtrained by the beaſts that go in his land, nor by his "ſheep, but until another diſtreſs or chattels be found, "except for *damage feaſant*." This ſtatute, therefore, extends only to diſtreſſes between LANDLORD and TENANT.

2 Inſt. 133. Dyer 312. 1 Sid. 348.

16. Cattle, which are in certain land, by way of *agiſtment*, may be diſtrained for rent; and generally whatever goods and chattels the landlord finds upon the premiſſes, whether they in fact belong to the tenant or a ſtranger, are diſtrainable by him for rent.

1 Roll. Abr. 669. 3 Bl. Com. 8.

17. Horſes joined to a cart, with a man upon it, cannot be diſtrained for *rent*, although they may be diſtrained for *damage feaſant*; but if the man be not upon the cart, the cart and horſes may be diſtrained for *rent*.

1 Veat. 36.

18. Things for which a replevin will not lie, ſo as to be known again, as money out of a bag, cannot be diſtrained; but money in a bag ſealed may be diſtrained; for the bag being ſealed may be known again.

1 Burn's Juſtice 477.

19. Where a *ſtranger's* beaſts eſcape into the land, they may be diſtrained for rent, though they have not been *levant and couchant*, provided they are treſpaſſers: But, except in the caſe of an *ancient feignory*, if the tenant of the land is in fault in not repairing his fences, whereby the beaſts came into the land, the LANDLORD cannot diſtrain

Lutw. 364. See the caſe of Kemp v. Crews, Ld. Ray. 168.

(*a*) The goods of a *third perſon* to be exempted from diſtreſs, muſt be goods in the way of trade; and therefore where the captain of a ſhip had ſent his ſails, *&c.* to a ſale-maker, to lie in his warehouſe until the ſhip went out again, was, on the jury holding them to be articles in the way of trade, held by LORD KENYON exempt from diſtreſs.

2 Vern. 231. 3 Com. Dig 117. ſuch beaſts, though they have been *levant and couchant*, unleſs he have cauſed notice to be given to the owner, and the owner ſuffer them to remain there afterwards.

1 Roll. Abr. 665. 20. If a man hath common for ten cattle, and he put in more, the ſurpluſage above ten may be taken *damage feaſant.*

2 Vent. 228. 283. 21. If *A.* tenant in common with *B.* and *C.* leave his third part, the cattle of *B.* or *C.* or any depaſturing by their licence, cannot be taken for *rent* by *A.*

1 Salk. 248. 1 Ld. Ray. 55. 384. 22. The anchor and ſails of a ſhip, are diſtrainable for *port duties*; but the tackle of a ſhip is not diſtrainable of common right for *toll*; but by cuſtom it may; the law making a difference between the diſtreſſes which are allowed for *rent*, and for a *toll*; nor can a diſtreſs be made for the toll of goods fraudulently ſold out of a market to avoid the toll.

5 Mod. 362. Cowp. 661. 23. On a leaſe of tithes, rendering rent, no diſtreſs can be made of the tithes, becauſe the tithes are the things leaſed.

Ld. Ray. 720. 24. If cattle, after they are diſtrained, are put into an open pound, and there die; the perſon who diſtrained, may bring his action for the rent, or may diſtrain again; and if they are ſtolen thereout, he has the ſame elective remedy.

Gilbert 34. 25. A mill-ſtone cannot be diſtrained, though it is raiſed to be picked, ſo long as it lies on the other ſtone.

2 Lutw. 1572. Cro. Eliz 13. 4 Burr 590. 3 Black. Com. 11, 12. 26. A perſon cannot diſtrain for part of his rent, and make a ſecond diſtreſs for the remainder; for when a man is intitled to diſtrain for an intire duty, he ought to diſtrain for the whole at once, and not for part at one time, and part at another; but if he diſtrain for the whole, and there is not ſufficient on the premiſſes, or if he happen to miſtake in the value of the thing diſtrained, and ſo takes an inſufficient diſtreſs, he may take a ſecond diſtreſs to compleat his remedy: And, indeed, it is enacted by the 17 *Car.* 2. *c.* 7. *ſ.* 4. that in diſtraining *cattle* for rent, if they ſhall not be found to be of the full value of the arrears diſtrained for, the party, his executors and adminiſtrators may, from time to time, diſtrain again for the reſidue of the ſaid arrears. (*a*)

(*a*) By 19 Car. 2. *c.* 5. this act is extended to *Wales* and the *counties palatine.*

Dougl. 411. 27. If a candle-maker, or maltſter, *forfeit* the ſingle duties, and then become a bankrupt, and is *convicted* after the aſſignment of his eſtate, the double duties may be *diſtrained* for on the candles, malt, utenſils, and materials, in the hands of the aſſignees.

Biſſet *v.* Caldwell and Tayler at *niſi prius*, in B. R. in Hilary Term 31 Geo. 3. 28. On an action of treſpaſs for a diſtreſs for rent, it appeared that part of the things taken was the wife's and childrens' cloaths, while they were in bed, which they had taken

taken off the preceding evening, meant to put on when they got up, and were in the daily habit of wearing: It was objected, (*a*) that theſe were things that could not be taken in diſtreſs: LORD KENYON, *Chief Juſtice*, ſaid, that this was *vexata queſtio*; and, at common law, ſuch things could not be diſtrained, becauſe it would be unprofitable to the common-wealth, as they could not, while *a pledge*, be laboured; but ſince the ſtatute of *William* and *Mary*, had allowed a diſtreſs to be ſold, the reaſon of the common law had vaniſhed; and therefore he held them liable to the diſtreſs.

(*a*) By Mr. Erſkine.

29. On a cuſtom, that a tenant may leave his *way-going* crops in the barns of the farm for a certain time after the leaſe is expired, the landlord, although the tenant has quitted the premiſſes, may diſtrain the corn ſo left for rent arrear, after ſix months have expired from the determination of the term.

Beavan v. Delahay, C. B. Eaſter, 28 Geo. 3.

III. *At what Time a Diſtreſs ſhall be taken.*

1. A DISTRESS for *rent* cannot be made in the night, but one may diſtrain cattle, *damage feaſant*, in the night; for otherwiſe they might be gone before the morning; and, therefore, no diſtreſs, except for *damage feaſant*, can be made before *ſun-riſing*, and after *ſun-ſet*.

Co. Lit. 142. 767. 9 Co. 66. Latch. 211.

Mirror, c. 2. ſ. 26.

2. A diſtreſs for rent cannot be made upon the day on which the rent became payable, for it cannot be due until the laſt hour of that day; nor, by the common law, could a diſtreſs be made after the leaſe or term was expired, but now by 8 *Ann. c.* 14. it may be made at any time within ſix months after.

Dr. & St. b. 2. c. 9. Co. Lit. 47.

Vide ante p.

3. No diſtreſs ought to be made on a *Sunday*, except for *damage feaſant*.

4. If a perſon grant a leaſe, and after the expiration of the leaſe, there is rent in arrear, no diſtreſs can be made for it, *except* the landlord's title, and the tenant's poſſeſſion, continue; and if a leaſe be made till *Michaelmas*, for *one year*, rendering rent *at Michaelmas*, the landlord cannot diſtrain *before Michaelmas*, at which time his term ended.

5. A diſtreſs may be made for rent, accrued after a notice to quit, has expired; but it is a waiver of the notice.

Touch v Willingale, Hilary, 30 Geo. 3. C. B.

6. By 8 *Ann. c.* 14. *ſ.* 6. Goods may be *diſtrained* for rent arrear, at any time within ſix months after the expiration of the leaſe.

IV. *In what Place a Diſtreſs may be made.*

2 Inſt. 104. 2 And. 71.

1. By the 52 *Hen.* 3. *c.* 2. "None ſhall *diſtrain* any to "come to his court, which is out of his fee, or upon whom "he has no juriſdiction, by reaſon of a hundred or baili- "wick; NOR take *diſtreſſes* out of the fee or *place* where he "hath juriſdiction."—This ſtatute is a declaration of the common law, and means *ſuit ſervice* in reſpect of a *ſeignory*, and not *ſuit real*, in reſpect of *reſidence*; but no diſtreſs is prohibited, by this act, in any place where a perſon hath power, or otherwiſe, to diſtrain.

2 Inſt. 131. Mirror c. 2. § 26.

2. By 9 *Edw.* 2. *c.* 9. "The king's officers, as ſheriffs, "and others, ſhall not take diſtreſſes in the fee, wherewith "churches, in time paſt, have been endowed;" but *diſtreſſes* may be taken in poſſeſſion of the church newly purchaſed.

2 Inſt. 131. See 2 Bac. Abr. p. 111. in notes.

3. By 52 *Hen.* 3. *c.* 2. "No perſon, except the king's "officers, ſhall take diſtreſſes in the *king's highway*," for the king's ſubjects ought to have free paſſage, as well to fairs and markets, as about their other affairs.

Sed vide ante p. 78. Sect. 7.

4. By 8 *Ann. c.* 14. "In caſe any leſſee for life or lives, "term of years, at will, or otherwiſe, of any meſſuages, "lands or tenements, upon the demiſe whereof any rents "ſhall be reſerved or made payable, ſhall fraudulently or "*clandeſtinely* convey or carry off, from ſuch demiſed pre- "miſſes, his goods or chattels, with intent to prevent the "landlord or leſſor from diſtraining the ſame for arrears of "ſuch rent ſo reſerved as aforeſaid: It ſhall and may be "lawful for ſuch leſſor or landlord, or any perſon or per- "ſons by him for that purpoſe lawfully empowered, within "the ſpace of *five days* next enſuing ſuch conveying away, "or carrying off ſuch goods or chattels as aforeſaid, to take "and ſeize ſuch goods and chattels wherever the ſame ſhall "be found, as a diſtreſs for the ſaid arrears of ſuch rent; "and the ſame to ſell or otherwiſe diſpoſe of in ſuch man- "ner, as if the ſaid goods and chattels had actually been "diſtrained by ſuch leſſor or landlord, in and upon ſuch "demiſed premiſes, for ſuch arrears of rent; any law, cuſ- "tom, or uſage, to the contrary in any-wiſe notwithſtand- "ing. PROVIDED, that nothing in this act ſhall empower "ſuch leſſor or landlord to take or ſeize any goods or chat- "tels, as a diſtreſs for arrears of rent, which be ſold *bona* "*fide*, and for a valuable conſideration, before ſuch ſeizure "made."

Landlord may ſeize goods fraudulently carried off the premiſes, &c.

5. By

5. By 11 *Geo.* 2. *c.* 19. If goods be fraudulently conveyed off the premiſſes, the landlord may, within thirty days, diſtrain them at *the place* to which they are ſo fraudulently removed. See the ſtatute more at large, ante p. 78.

6. A diſtreſs for rent may be made in any part of the land out of which the rent iſſues, or if a houſe be upon the land demiſed or charged, a diſtreſs may be made in the houſe when the houſe is *open*; ſo alſo it may be taken out of a window, but one cannot break open the outer-door to diſtrain; and therefore it was held by LORD HARDWICKE, that the breaking of a padlock put upon a barn door, by force, in order to diſtrain the corn lodged therein, was illegal; (*a*) but if the outer-door be open, one may break open the inner-door to diſtrain. 1 Roll. Abr. 671. 5 Co. 92. Com. 17. 2 Bac. Abr. 111. 3 Com. Dig. 116. (*a*) 9 Viner's Abr. 126.; but

7. If land lie in two counties, a diſtreſs may be made for the whole rent in either county: So if it be in the hands of many tenants, it may be for the whole in the land of any tenant; but if two parcels of land are let by the ſame leſſor to the ſame leſſee, by ſeparate demiſes, and rent due on both, there cannot be a joint diſtreſs for both. 1 Roll. Abr. 671. Rogers v. Buckmire, Stra. 1040. B. R. H. 245.

V. *How a Diſtreſs ſhall be diſpoſed of by the* COMMON LAW.

1. A DISTRESS, by the common law, cannot be ſold, but muſt, in the firſt place, be carried to ſome pound, and there impounded by the taker. A POUND, is either *pound overt*, that is, open-head, or *pound covert*, that is, cloſe. Diſtreſs muſt be pounded.

2. By the ſtatute 1 & 2 *Philip & Mary*, *c.* 12. no diſtreſs of cattle can be driven out of the hundred where it is taken, unleſs to a pound-overt, within the ſame, and within three miles of the place where it was taken; and no ſingle diſtreſs of goods or cattle ſhall be impounded in ſeveral places, to enforce ſeveral *replevins*, on pain of five pounds and treble damages; AND none ſhall take above *fourpence* for impounding of any one diſtreſs, on pain of *five pounds* above the money ſo taken. Cattle driven out of the hundred, muſt be to pound *overt*.

3. If a diſtreſs of live animals, be impounded in a common POUND-OVERT, the owner muſt take notice of it at his peril; but if in any ſpecial pound-overt, ſo conſtituted for this particular purpoſe, the diſtrainer muſt give notice to the owner; and in both theſe caſes, the owner, and not the diſtrainer, is bound to provide the beaſts with food and neceſſaries; but if they are put in a pound-covert, as in a ſtable, or the like, the landlord or diſtrainer muſt feed and ſuſtain them: A diſtreſs of houſehold goods, or other Co. Lit. 47. 2 Inſt. 106. Owen 124. Dyer 280. Co. Jac. 148.

other dead chattels, which are liable to be ſtolen or damaged by weather, ought to be impounded in a pound-covert, alſo the diſtrainer muſt anſwer for the conſequences.

(a) Vide poſt, 93. 11 Geo. 2. c. 19.

4. A diſtreſs cannot be uſed or abuſed; for it will make him who diſtrained a treſpaſſer *ab initio*; (a) as if he drive cattle diſtrained into another county, and then ſell it; or if a horſe be tied to the pound, to prevent his leaping out, and he ſtrangles himſelf; or if a man work cattle diſtrained; or if a man diſtrain a hide, and then tans it, although it be for its preſervation: So if a man milk a cow, though it be for the benefit of the cow: But a uſing for the benefit of the owner ſhall be allowed, as if a man be taken for diſtreſs, and the taker ſecures it; ſo if cows, horſes, *&c.* be taken in *withernam*, they may be milked or worked in a reaſonable manner; for they are delivered to the party in lieu of his own cattle; and if a man diſtrain for ſeveral barrels of beer, and draw beer out of any of them, he is a treſpaſſer *ab initio* as to that barrel only.

1 Anſ. 65.
1 Roll. Abr. 673.
2 Wilſ. 313.
Gilbert 52.
1 Leon. 220.
Cro. Eliz. 783.
1 Leon. 220.
6 Mod. 216.

2 Stra. 1272.

5. Impounding a diſtreſs in another county, does not make the party a treſpaſſer.

6. If turfs lie on a common, *damage feaſant*, a commoner may diſtrain them, but he cannot *burn* them.

VI. *How a Diſtreſs ſhall be diſpoſed of by* STATUTE.

1. A DISTRESS can only be made by and according to the rules of the common law, and the thing taken, being intended merely to procure a ſatisfaction for an injury committed, or a duty not performed, was conſidered only as a *pledge* to compel performance or recompence, and therefore could not be ſold; but this being found inconvenient in diſtreſſes for the recovery of *rent in arrear*, the legiſlature interpoſed to remedy it.

(a) N. B. At the common law no notice of diſtreſs was neceſſary; therefore Landlord may ſeize goods under a diſtreſs, and keep them as a pledge; but he cannot proceed to *ſell* them, unleſs notice has been given purſuant to this ſtatute.

2. By the 2 *Will.* & *Mary*, *c.* 5. therefore it is enacted, "That where any goods or chattels ſhall be diſtrained for "any rent reſerved and due upon any demiſe, leaſe, or "contract whatſoever, and the tenant or owner of the "goods ſo diſtrained on, ſhall not within *five days* next "after ſuch diſtreſs taken, and *notice* thereof (a) (with the "cauſe of ſuch taking) left at the chief manſion-houſe, or "other moſt notorious place on the premiſes charged with "the rent diſtrained for, *replevy* the ſame, with ſufficient "ſecurity to be given to the ſheriff according to law; that "then and in ſuch caſe after ſuch diſtreſs made and notice

"as

" as aforeſaid given, and at the expiration of the ſaid *five* " *days*, the perſons diſtraining ſhall and may with the ſheriff " or under-ſheriff of the county, or with the conſtable of " the hundred, pariſh or place, where ſuch diſtreſs ſhall be " taken, (who are hereby required to be aiding and aſſiſting " therein) cauſe the goods and chattels ſo diſtrained to be " *appraiſed* by two ſworn appraiſers (whom ſuch ſheriff, " under-ſheriff or conſtable, are hereby impowered to ſwear " to appraiſe the ſame truly according to the beſt of their " underſtanding) and after ſuch appraiſement, ſhall and " may lawfully *ſell* the goods and chattels ſo diſtrained, for " the beſt price that ſhall be gotten for the ſame, towards " the ſatisfaction of the rent, for which the ſaid goods and " chattels ſhall have been diſtrained, and of the charges of " ſuch diſtreſs, appraiſement, and ſale, leaving the over- " plus (if any) in the hands of the ſaid ſheriff, under-ſhe- " riff, or conſtable, for the owner's uſe."

3. A notice, under this clauſe of the ſtatute, was given without ſtating *the cauſe of the taking*, and it was contended that the requiſites mentioned in the act, are in the nature of *conditions precedent*, and if not complied with, the proceedings are illegal. But by BULLER, *Juſtice*, it is not neceſſary, by this ſtatute, to ſet forth in the notice at what time the rent became due. Moſs v. Gallimore. Doug. 281.

4. If a diſtreſs be made in two hundreds *viz. A.* and *B.* in different counties, OATH, to the appraiſers, upon ſale, adminiſtered by the conſtable of the hundred of *A.* in the hundred of *B.* is good. 1 Salk. 247. 1 Ld. Ray. 54.

5. A *perſonal notice* of diſtreſs is ſufficient; for it need not be at the chief manſion-houſe, or other notorious place, on the premiſſes, the intent of the act being only that the party ſhould have notice, which is performed by this means, better than if it had been left at the houſe or other notorious place. 4 Mod. 390. 1 Ld. Ray. 53. 12 Mod. 76.

6. If the goods diſtrained are not the goods of the tenant himſelf, notice to the owner of the goods is ſufficient in *trover*, or other action for the goods by the *owner*; but if the *tenant* had brought *replevin* for the goods, notice to the owner had not been ſufficient, without notice alſo at the manſion of the tenant, or other notorious place upon the premiſſes. 3 Com. Dig. 123.

7. By 8 *Ann. c.* 14. which authoriſes a landlord to have one year's rent before an execution can be executed; (*a*) and alſo authoriſes landlords to ſeize goods fraudulently carried (*a*) Ante p. 88.

carried off the premiſſes. (*a*) It is enacted, that all *diſtreſſes* to be made, ſhall be liable to ſuch ſales, and in ſuch manner, as by 2 *Will.* & *Mary*, *c.* 5. is deſcribed, and the money ariſing by ſuch ſales, to be diſtributed in like manner.

(*a*) Ante p. 78.

Diſtreſſes may be ſecured and ſold on the premiſſes.

8. By 11 *Geo.* 2. *c.* 19. "It ſhall and may be lawful to "and for any perſon or perſons lawfully taking any diſtreſs "for any kind of *rent*, to impound or otherwiſe to ſecure "the diſtreſs ſo made, of what nature or kind ſoever it "may be, in ſuch place, or on ſuch part of the premiſſes "chargeable with rent, as ſhall be moſt fit and convenient "for impounding and ſecuring ſuch diſtreſs; and to ap"praiſe, ſell, and diſpoſe of the ſame upon the premiſſes, "in like manner, and under the like directions and re"ſtraints to all intents and purpoſes, as any perſon taking a "diſtreſs for rent may now do of the premiſſes, by virtue of "the acts already in force; AND THAT it ſhall and may "be lawful to and for any perſon or perſons whatſoever, to "come and go to or from ſuch place or part of the ſaid "premiſſes, where any diſtreſs for rent ſhall be impounded "and ſecured as aforeſaid, in order to view, appraiſe, and "buy, AND ALSO in order to carry off or remove the ſame "on account of the purchaſer thereof; AND THAT if any "*pound-breach* or *reſcous* ſhall be made of any goods and "chattels, or ſtock diſtrained for rent, and impounded or "otherwiſe ſecured by virtue of this act, the perſon or "perſons aggrieved thereby ſhall have the like remedy, as "in caſe of *pound-breach*, or *reſcous*, is given and provided "by the ſaid ſtatute."

4 Mod. 390.

9. A ſale by the diſtrainer, or his tenant, is ſufficient, though the ſheriff, &c. be not preſent at the ſale; and a ſale for the price at which they are appraiſed, ſhall be intended the beſt price, if the contrary do not appear.

2 Ld. Ray. 55.

Rex *v.* Cotton, Trinity Term 1755, in the exchequer; and the judgment affirmed on a writ of error.

10. If a diſtreſs be made for rent, and before the five days given by the ſtatute of *William and Mary*, be expired, AN EXTENT is iſſued, though it be not levied for a debt due to the *crown*, the EXTENT ſhall take place of the DISTRESS; becauſe the diſtreſs doth not ouſt the property of the effects into the landlord, but is only *a pledge* in his hands for ſecurity for his rent.

Wallace *v.* King Eaſter, 28 Geo. 3. C. B.

11. The five days allowed by 11 *Geo.* 2. *c.* 19. before a diſtreſs can be ſold, are *incluſive* of the day of the ſale.

VII. *Of an irregular and exceſſive Diſtreſs.*

1. THE ſtatute of the 2 *Will.* & *Mar. c.* 5. enacts; that "if the tenant do not within *five days* next after the "diſtreſs, &c. replevy the ſame, the perſon diſtraining ſhall, "after appraiſement, ſell them;" and, therefore, if he do not remove the goods within the five days, he will be ſubject to an action of treſpaſs, for the ſurplus time he lets them remain. Griffin v. Scot. Stra. 717.

2. And by ſaid 2 *Will.* & *Mary*, *c.* 5. *ſ.* 5. "In caſe "any ſuch diſtreſs and ſale, as the act directs, ſhall be "made by virtue or color of the act for rent pretended to "be in arrear or due, when, in truth, no rent is in arrear "or due to the perſon diſtraining, or to him in whoſe "name or right ſuch diſtreſs ſhall be taken; the owner of "ſuch goods and chattels ſo diſtrained and ſold, his exe-"cutors or adminiſtrators may, by action of *treſpaſs* or "*caſe*, to be brought againſt the perſon ſo diſtraining, his "executors or adminiſtrators recover double the value of "the goods ſo diſtrained and ſold, with full coſts of ſuit."

3. The many particulars which attend the taking of a diſtreſs, uſed formerly to make it a hazardous kind of proceeding; for if any one irregularity was committed, it vitiated the whole, and made the diſtrainers treſpaſſers *ab initio*. 1 Vent. 37. 3 Bl. Com. 14, 15.

4. But by 11 *Geo.* 2. *c.* 19. *ſ.* 9. "Where any diſtreſs "ſhall be made for any kind of rent juſtly due, and any "irregularity or unlawful act ſhall be afterwards done by "the party or parties diſtraining, or by his, her, or their "agents, the diſtreſs itſelf ſhall not be therefore deemed "to be unlawful, nor the party or parties making it be "deemed a treſpaſſer or treſpaſſers *ab initio*; i. e. *from the* "*beginning*, but the party or parties aggrieved by ſuch un-"lawful act or irregularity, ſhall or may recover full ſatis-"faction for the ſpecial damage he, ſhe, or they ſhall have "ſuſtained thereby and no more, in an action of treſpaſs "or in an action on the caſe, at the election of the plain-"tiff or plaintiffs: PROVIDED, that where the plaintiff or "plaintiffs ſhall recover in that action, he, ſhe, or they "ſhall be paid his, her, or their full coſts of ſuit, and have "all the remedies for the ſame as in other caſes of coſts." Diſtreſſes for rent not unlawful, &c. for any irregularity in the diſpoſition of them.

5. By 11 *Geo.* 2. *c.* 19. *ſ.* 2. "In all actions of *treſ-*"*paſs* or on *the caſe*, to be brought againſt any perſon or "perſons entitled to rents or ſervices of any kind, his, her, "or In actions againſt perſons intitled to rent, defendants may plead the general iſſue, &c.

" or their bailiff or receiver, or any other perſon or per-
" ſons, relating to any entry by virtue of this act, or other-
" wiſe, upon the premiſſes chargeable with ſuch rents or
" ſervices, or to any diſtreſs or ſeizure, ſale, or diſpoſal of
" any goods or chattels thereupon; it ſhall and may be law-
" ful to and for the defendant or defendants in ſuch action
" to plead *the general iſſue*, and give *the ſpecial matter* in
" evidence; any law or uſage to the contrary notwithſtand-
" ing: And in caſe the plaintiff or plaintiffs ſhall be non-
" ſuited, diſcontinue his, her, or their action, or have
" judgment againſt him, her, or them, the defendant or
" defendants ſhall receive double coſts of ſuit."

Nor tenants to recover on tender of amends.

6. But by 11 *Geo.* 2. *c.* 19. *ſ.* 20. " No tenant or te-
" nants, leſſee or leſſees, ſhall recover in any action for any
" ſuch unlawful act or irregularity aforeſaid, if tender of
" amends has been made by the party or parties diſtraining,
" his, her, or their agent or agents, before ſuch action
" brought."

Biſſet v. Caldwell, at niſi prius, B. R. Hilary, 31 Geo. 3.

7. A landlord cannot juſtify, under the plea of the general iſſue given by the 11 *Geo.* 2. *c.* 19. except for acts done as landlord; and, therefore, although he may juſtify, as far as the *diſtreſs* goes, he cannot juſtify *expulſion* under this iſſue: So alſo if the goods continue on the premiſſes, beyond the *five days*, he cannot juſtify under this iſſue, entering the houſe to remove them afterwards, but muſt plead a licence to juſtify the *aſportavit*, or *liberum tenementum*, to juſtify the expulſion.

1 Term Rep. C. B. 13.

8. Trover will not lie ſince the 11 *Geo.* 2. *c.* 19. for goods taken under an unequal diſtreſs; for it muſt be either caſe or treſpaſs.

9. As to EXCESSIVE DISTRESS, it is enacted, by 52 *Hen.* 3. *c.* 4. commonly called the ſtatute of *Marlbridge*, that diſtreſſes ſhall be reaſonable, and not too great; and he that taketh great and unreaſonable diſtreſſes, for rent arrear, ſhall be grievouſly amerced: As if the landlord diſtrain two oxen for twelve-pence rent; the taking *both* is an unreaſonable diſtreſs; but if there were no other diſtreſs nearer the value to be found, he might reaſonably have diſtrained one of them.

Co. Lit. 160, 161.

10. But for homage, fealty, or ſuit, as alſo for parliamentary wages, it is ſaid that no diſtreſs can be exceſſive; for as theſe diſtreſſes cannot be ſold, the owner, upon making ſatisfaction, may have his chattels again.

11. The

11. The remedy, for exceſſive diſtreſſes, is by a ſpecial action on the ſtatute of *Marlbridge*; for an action of *treſpaſs* is not maintainable on this account, it being no injury at common law. Co. Lit. 47. 1 Vent. 104. Fitz. 35. 4 Burr. 590.

VIII. *Of reſcuing a Diſtreſs*; AND *Pound Breach.*

1. RESCUE is, where a man ſets at large goods lawfully diſtrained; but if a diſtreſs be taken without cauſe, or contrary to law, as if no rent be due, or it be taken on the king's highway, or the like, it may be lawfully reſcued by the tenant or owner, at any time, before it is impounded. But if it be once impounded, even though taken without any cauſe, the owner may not break the pound and take them out, for they are then in the cuſtody of the law. (*a*) Co. Lit. 160. 3 Bl. Com. 12. Co. Lit. 47. F. N. B. 101. 4 Co. 11.

(*a*) *Sed Qu.*: If he find the pound door unlocked whether he may take them out.

2. If a landlord come to diſtrain for rent, and ſee the cattle, and the tenant, or his ſervants, drive them out of his fee, yet this is no *reſcue*, (*b*) for the cattle were never in his poſſeſſion; but if the diſtreſs be for rent, he may follow them, and diſtrain them in another man's ground.

(*b*) But an action on the caſe will lie for preventing him from making the diſtreſs. F. N. B. 102.

3. If a perſon diſtrain goods, and do not declare the cauſe or reaſon for ſo doing; if they are put into a houſe, the owner may break the houſe, and take them out.

4. If cattle diſtrained go into the houſe of the owner, and he, on demand, refuſe delivery, it will be a reſcue; but if he who takes the diſtreſs gets the poſſeſſion, the redelivery is no reſcue. Co. Lit. 161. Mod. Caſes 215.

5. By 2 *Will.* & *Mary*, *c.* 5. on a *pound breach*, or *reſcue* of goods diſtrained for *rent*, the perſon grieved, may, by ſpecial action on the caſe, recover treble damages and coſts (*c*) of ſuit, againſt the offender or owner of the goods, if they be found to come to his uſe or poſſeſſion. Lutw 213.

(*c*) The coſts ſhall be trebled as well as the damages. Ld. Ray. 20.

6. So, by the common law, the maſter for whom the diſtreſs was made, may have remedy by *writ of reſcous*. Fitzherbert's Natura Brevium p. 101.

7. So the party may maintain an *action on the caſe*, on the ſtatute of *William and Mary*, though no notice of the diſtreſs (*d*) was given to the leſſee; for notice ſignifies nothing to a wrong-doer. Lut. 214.

(*d*) Vide ante, p. 91.

8. If the tenant tender the rent before diſtreſs, which is refuſed, and the landlord afterwards diſtrains, or the cattle of a ſtranger be taken, the *tenant*, or *owner*, may lawfully reſcue the goods diſtrained. Co. Lit. 160. 2 Inſt. 107. 3 Com. Dig. 122.

9. If a perſon diſtrain cattle, and pound them in another man's cloſe, with his conſent, and the owner of the cattle take them out; in this caſe, he that made the diſtreſs

treſs ſhall have an action for *pound breach*, and the owner of the cloſe, an action of *treſpaſs* for breaking his cloſe.

10. If a perſon break the pound, and take out goods, he that diſtrains, may have an action againſt the party for *pound breach*, and may alſo take the goods again whereſoever he finds them, and put them in the pound again.

IX. *Of Landlords' Remedy when there is no Diſtreſs.*

Proviſion for landlords where tenants deſert the premiſes.

1. By 11 *Geo.* 2. *c.* 19. *ſ.* 16. "If any tenant holding "any lands, tenements or hereditaments, at a rack-rent, "or where the rent reſerved ſhall be full *three-fourths* of "the yearly value of the demiſed premiſſes, who ſhall be "in arrear of *one year's rent*, ſhall deſert the demiſed pre- "miſſes, and leave the ſame uncultivated or unoccupied, ſo "as *no ſufficient diſtreſs* (*a*) can be had to counterbalance the "arrears of rent; it ſhall and may be lawful to and for "two or more juſtices of the peace of the county, riding, "diviſion or place, (having no intereſt in the demiſed pre- "miſes) at the requeſt of the leſſor or landlord, leſſors or "landlords, or his, her or their bailiff or receiver, to go "upon and view the ſame, and to affix, or cauſe to be af- "fixed, on the moſt notorious part of the premiſſes, notice "in writing, what day (at the diſtance of *fourteen days* at "leaſt) they will return to take a ſecond view thereof; "and if, upon ſuch ſecond view, the tenant, or ſome per- "ſon on his or her behalf, ſhall not appear and pay the "rent in arrear, or there ſhall not be a ſufficient diſtreſs "upon the premiſſes; then the ſaid juſtices may put the "landlord or landlords, leſſor or leſſors, into the poſſeſſion "of the ſaid demiſed premiſſes; and *the leaſe* thereof to "ſuch tenant, as to any demiſe therein contained only, "ſhall from thenceforth become void.

(*a*) See poſt. Chap. 9. EJECTMENT, where a ſpeedy mode is given of recovering poſſeſſion, when *half a year's rent* is in arrear, and no diſtreſs.

Tenants may appeal from the juſtices.

2. By 11 *Geo.* 2. *c.* 19. *ſ.* 17. PROVIDED, that ſuch pro- "ceedings of the ſaid juſtices ſhall be examinable in a ſum- "mary way by the next juſtice or juſtices of the aſſize of "the reſpective counties, in which ſuch lands or premiſſes "lie, and if they lie in the city of *London*, or county of "*Middleſex*, by the judges of the court of *King's Bench*, "or *Common Pleas*; and if in the counties palatine of *Cheſ- "ter*, *Lancaſter*, or *Durham*, then before the judges there- "of; and if in *Wales*, then before the grand courts of "ſeſſion reſpectively, who are hereby reſpectively empower- "ed to order reſtitution to be made to ſuch tenant, together "with

" with his or her expences and coſts, to be paid by the " leſſor or landlord, if they ſhall ſee cauſe for the ſame; " and in caſe they ſhall affirm the act of the ſaid juſtices, " to award coſts, not exceeding *five pounds* for the frivolous " appeal."

X. *Precedents and Inſtructions for making a* DISTRESS.

The form of a letter of attorney to impower a perſon to diſtrain for rent.

To be ſtamped as a *deed*, viz. to the amount of ſix ſhillings, but not on a ſix ſhilling ſtamp.

1. KNOW ALL MEN by theſe preſents, that I *A. B.* of the pariſh of in the county of , eſq; for divers good cauſes and conſiderations me hereunto moving, HAVE made, nominated, authoriſed, conſtituted and appointed, and by theſe preſents DO make, nominate, authoriſe, conſtitute, and appoint *C. D.* of , in the county aforeſaid, eſq; and *E. F.* of the ſaid place gentleman, jointly and ſeverally my true and lawful attorney and attornies for me, and in my name, place and ſtead, either jointly or ſeverally, to enter into and upon ALL that meſſuage or tenement, farm, lands, hereditaments, and premiſſes, ſituate and being in the pariſh of , in the county aforeſaid, or one of them, and now in the tenure or occupation of *G. H.* yeoman, his under tenants or aſſigns, and held by him of me, at or under the yearly rent of pounds, and to make or cauſe to be made, one or more diſtreſs or diſtreſſes on all or any hay, corn, goods, chattels, cattle, beaſts, ſheep, or other effects or things whatſoever ſtanding, lying, or being, in or upon the ſaid demiſed premiſſes, or on any part thereof, for all ſuch rent or rents, as was or were due, owing, or in arrear unto me at *Michaelmas-day* laſt paſt, for or on account of the ſaid premiſſes or any part thereof; and ſuch diſtreſs or diſtreſſes, when made, or taken for me and on my behalf, to hold, detain and keep, or cauſe to be held, detained and kept, until payment and ſatisfaction be made unto me for all ſuch rent due and in arrear unto me, and all coſts and charges of making ſuch diſtreſs, and in caſe of non-payment thereof within the time limited, after ſuch diſtreſs made, by the laws now in force, to appraiſe, ſell, and diſpoſe of the ſame, or cauſe the ſame to be appraiſed, ſold, and diſpoſed of according to law, I the ſaid *A. B.* hereby giving and granting unto my ſaid attornies and attorney, jointly or ſeverally, full power and authority for me and in my name, on my behalf to do, or cauſe to be

done, all ſuch acts, matters and things whatſoever, touching, concerning, or any ways relating to the ſaid premiſſes, as ſhall or may be neceſſary to or for the purpoſes aforeſaid, as fully and effectually, to all intents and purpoſes whatſoever, as if I myſelf was perſonally preſent, and did the ſame, hereby ratifying, confirming, and allowing, all and whatſoever my ſaid attornies or attorney, or either of them, ſhall lawfully do or cauſe to be done in or about the ſaid premiſſes, by virtue of theſe preſents. IN WITNESS whereof, I, the ſaid *A. B.* have hereunto ſet my hand and ſeal this day of , in the year of our Lord 1791.

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of us }

The form of a warrant to diſtrain.

The like ſtamp as the laſt.

2. KNOW ALL MEN, by theſe preſents, that I *F. G.* of *London*, eſq; DO hereby authoriſe and appoint *T. C.* of, *&c.* gentleman, to take any perſon or perſons to his aſſiſtance, and to enter into the houſe of *A. B.* in, *&c.* and there make a diſtreſs of all ſuch goods and chattels as are in and upon the premiſſes, or any part thereof, for pounds for one half year's rent due to me the ſaid *F. G.* at *Michaelmas-day* laſt. And after the ſaid goods are ſo diſtrained, if the ſaid *A. B.* does not, within the time limited by law, pay the ſaid rent, or replevy the ſaid goods, then and in ſuch caſe I do hereby authoriſe you the ſaid *T. C.* to cauſe the ſaid goods to be appraiſed, and according to ſuch appraiſement, to make ſale thereof to ſuch perſon or perſons who will buy the ſame; and to diſpoſe of the money ariſing by the ſale, in ſuch manner as by the ſtatute made for that purpoſe is directed: And for your ſo doing, this ſhall be your ſufficient warrant, WITNESS my hand and ſeal this day of , in the year 1791.

Sealed, &c. *F. G.*

To Mr. *T. C.* my Bailiff, *greeting.*

NOTE: This warrant may be made on paper without a ſtamp.

3. SIR, diſtrain the goods and chattels of *A. B.* in the houſe he now dwells in, ſituate in , in the county of , for pounds, being *two years* rent (*or as the caſe may be*) due to me, for the ſame at *Michaelmas* laſt, and for your ſo doing this ſhall be your ſufficient warrant.

Dated, *&c.* *F. G.*

4. I *T. C.* as bailiff to Mr. *F. G.* do diſtrain this *table (or the firſt thing you lay your hands on)* in the name of the whole goods and chattels in this houſe, for and towards the ſatisfaction and payment of the ſum of pounds, being *two years* rent pounds *per annum*, due to the ſaid *F. G.* at *Michaelmas* laſt.

Words uſed in diſtraining goods, when done by the landlord's bailiff.

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5. NOTE. After this proceed to take AN INVENTORY of ſo much of the goods as you judge will be ſufficient to pay the rent in arrear; AND after the inventory is taken, *a fair copy* muſt be made of it, beginning with the following title, *viz.*

Inventory on copy.

6. AN INVENTORY of the goods and chattels diſtrained by me *T. C.* as bailiff to Mr. *F. G.* in the dwelling-houſe of *A. B.* in , in the county of , this day of , being for *two years* rent due to the ſaid *F. G.* for the ſaid houſe and appurtenances therewith demiſed, at *Michaelmas-day* laſt, and as yet in arrear and unpaid.

Form of the inventory.

This inventory requires no ſtamp, the ſame being expreſsly excepted in the act. See ſtat. 23 Geo. 3. chap. 58. ſect. 2.

	£.	s.	d.
I. *In the Kitchen.*			
2 Wainſcot tables			
6 Old chairs			
5 Copper ſaucepans			
2 Pottage pots, &c.			
II. *In the Parlour.*			
1 Large pier looking-glaſs			
2 Sconces in gilt frames			
2 Mahogany card-tables, &c.			
1 Pembroke table			
III. *In the Dining-room.*			
6 Hair-bottom chairs, mahogany frames, &c.			
1 Set of dining tables.			

7. NOTE. At the end of the inventory, write the following *notice* to the perſon whoſe goods you diſtrain, *viz.*

8. Mr. *A. B.* Take notice that I as bailiff to Mr. *F. G.* have this day diſtrained the goods and chattels mentioned in the

Notice to the perſon whoſe goods are diſtrained.

the above inventory for the ſum of pounds, being *two years* rent due at *Michaelmas-day* laſt, for the premiſſes above-mentioned, and have ſecured the ſaid goods and chattels in the *front parlour* of the ſaid houſe, and that unleſs the ſaid arrears of rent and charges of diſtreſs be paid, or the goods replevied within *five days* from the date hereof, the ſaid goods will be appraiſed and ſold according to law. Dated, *&c.* *T. C.*

Memorandum of delivering *a true copy* of the inventory to the tenant.

9. A TRUE COPY of the above *inventory* and *notice* was this day of ; 1791, delivered to the above mentioned *A. B.* in the preſence of us, *P. Q.* *R. S.*

How the inventory and notice muſt be ſerved.

10. NOTE. This *inventory* with the *notice* thereunder written muſt be left at the houſe, with any perſon dwelling therein; or, if there be no perſon in the houſe, on the table in the kitchen, or ſome other notorious part of the houſe. It is proper to have another perſon with you when you make a diſtreſs, to examine the inventory, and to be witneſs to the tranſaction, if called on for that purpoſe.

The time and manner in which the goods are to be removed and ſold.

11. The ſafeſt way is to remove the goods immediately, and in the notice to acquaint the tenant where they are removed to; but it is now moſt uſual to let them ſtay on the premiſſes, and leave a man in poſſeſſion to protect them till you are entitled to fell them by law, which is on the *ſeventh day*, becauſe the ſtatute ſays, you are to give *five days* notice, and it is held and underſtood to be *five whole days*, which muſt be *excluſive* of the day the diſtreſs was made.

Sed vide ante p. 92. pl. 11.

If the tenant requires *time*, the landlord muſt take his *written authority* to continue in poſſeſſion.

12. If the tenant want further time to raiſe the money, and the landlord chuſes to give him ſuch indulgence, he muſt take A MEMORANDUM from the tenant, that poſſeſſion is continued at his requeſt, and by his deſire, or the landlord will be a *treſpaſſer* in continuing the ſame beyond the time limited by the ſtatute, and liable to an action for ſo doing.

The manner of appraiſing and ſelling the goods, if not replevied on the *ſixth* day.

13. On the *ſixth day*, the ſheriff's office ſhould be ſearched to ſee if the goods are *replevied*; if not, go to the premiſſes, and if the tenant be there, or any body on his behalf, demand the rent and charges of diſtreſs; if he do not pay the ſame, ſend for a conſtable and two ſworn appraiſers; let them ſee the goods taken in diſtreſs, and then the

the appraiſers muſt be ſworn by the conſtable, by laying their right hands on *a bible* having the *new teſtament* in it. The common way is for the appraiſers to buy the goods at their own valuation; and a receipt at the bottom of the inventory, witneſſed by the conſtable, is conſidered as a ſufficient diſcharge; but if the goods taken in diſtreſs are of great value, let there be a proper *bargain and ſale* between the *landlord*, the *conſtable*, the *appraiſers*, and the *purchaſer*, for the better proving of the tranſaction afterwards, if there ſhould be occaſion. The conſtable muſt adminiſter to the appraiſers the following oath:

The appraiſers' oath.

14. YOU and either of you ſhall make a true appraiſement of the goods now ſhewn to you, and mentioned and contained in this inventory, (*the conſtable having at the ſame time* THE INVENTORY *in his hand, and ſhewing the ſame*) according to the beſt of your judgment.

So help you God.

Memorandum of the appraiſers being ſworn.

15. MEMORANDUM that on the day of , 1791, *S. M.* of, *&c.* and *D. L.* of, *&c.* two ſworn appraiſers, were ſworn on the *Holy Evangeliſts* by me *W. O.* of, *&c.* conſtable, to make a true appraiſement of the goods and chattels mentioned in this inventory, according to the beſt of their judgment. Witneſs my hand.

W. O. Conſtable.

16. NOTE: After the appraiſers are ſworn and have viewed and valued the goods, indorſe the following memorandum on the inventory for the appraiſers to ſign.

Memorandum to be indorſed on the inventory.

17. WE the above-named *S. M.* and *D. L.* being ſworn on the *Holy Evangeliſts* by *W. O.* conſtable above-named, to make a true appraiſement of the goods mentioned in the above inventory, according to the beſt of our judgment, and having viewed the ſaid goods, DO adjudge and value the ſame at the ſum of pounds and no more. *As witneſs* our hands this day of , 1791.

S. M.
D. L.

18. NOTE: After the goods are ſold for the beſt price you can get for the ſame, you muſt deduct the arrears of rent and all reaſonable charges; and the overplus (if any) muſt be paid or applied to the tenant's uſe.

Mr. *T. C.*

The form of a notice from the tenant, where he requires a further time for the payment of the rent, &c.

19. I HEREBY deſire you will keep poſſeſſion of my goods which you have this day diſtrained for rent due from me to you, in the place where they now are, being in (*the premiſſes where the diſtreſs was made, which muſt be deſcribed*) and I will pay the man for keeping the ſaid poſſeſſion. *As witneſs* my hand this day of , 1791.

A. B.

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20. NOTE: If the ſheriff is in poſſeſſion of the goods of a tenant on *an execution*, the landlord need not make a *diſtreſs*, but ſhould forthwith ſerve him with the following notice.

To *J. W.* and *F. B.* Eſqrs. Sheriffs of *Middleſex*.

Notice to the ſheriff when in poſſeſſion on an execution.

21. TAKE NOTICE that there is now due from *A. B.* the perſon to whom the goods belong, you are now in poſſeſſion of, by virtue of his majeſty's writ of *fieri facias*, &c. *returnable* (*here mention the writ and return*) the ſum of pounds, for *one year*'s rent due at *Michaelmas-day* laſt. *As witneſs* my hand this day of , 1791.

F. G. Landlord of the ſaid premiſes.

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22. NOTE: The man in poſſeſſion of the goods, &c. is to be paid two ſhillings and ſix-pence *per* day, if the tenant keep him; and three ſhillings and ſix-pence if he keep himſelf.

CHAPTER THE EIGHTH.

Replevin.

1. REPLEVIN, from the Latin word *replegiare* which signifies to take back the pledge, is a proceeding grounded upon a *diſtreſs*; and conſiſts in a re-deliverance of the goods or cattle diſtrained to the firſt poſſeſſor, on his giving good ſecurity to the ſheriff or his officers to try the right of taking them in a ſuit at law and to re-deliver the things diſtrained if judgment be given againſt him. 2 Crompton's Practice 224. Co. Lit. 145. 3 Blac. Com. 13, 14, 147.

1. *For and againſt whom replevin lies.*
2. *For what things replevin lies.*
3. *The different kinds of replevin.* — 10
4. *Out of what courts replevin iſſues.* — 10
5. *Of the pledges in replevin.* — 10
6. *Of writs and proceſs in replevin.* — 10
7. *Of the declaration and pleas in replevin.* — 11
8. *Of the writ of enquiry.* — 11
9. *Of coſts in replevin.* — 12

10 Precedents.

I. *For and againſt whom Replevin lies.*

2. The general rule is, that the plaintiff in *replevin* muſt have a general or a ſpecial property in the goods at the time of the taking, and therefore a lord for *a heriot*, or a parſon for a *mortuary* ſhall not have it before the property have been veſted in them by ſeizure. AN EXECUTOR may bring replevin for goods and chattels taken in the life-time of his teſtator. A HUSBAND alone or huſband and wife jointly may bring replevin for cattle belonging to his wife, which were taken by diſtreſs previous to the coverture; for as this action admits and affirms the property to be in the wife at the time of the marriage, it of courſe is converted by the marriage into the excluſive property of the huſband. But in replevying goods which a wife holds as executrix, this action cannot be brought by either of them ſingly, but they muſt be joined. Several perſons whoſe reſpective properties are diſtrained cannot join in replevying them, but each muſt proceed for his own goods. Plowd. 281. Co. Lit. 145. 1 Sid. 82. F. N. B. 69. Vent. 261. 2 Lev. 107. 1 Sid. 172. 2 Stra. 1015. 4 Bac. Abr. 385. 5 Co. 19, 38.

II. *For what Things Replevin lies.*

3. REPLEVIN will lie for every ſpecies of chattel perſonal, which by its nature and in contemplation of law is capable Co. Lit. 145. F. N. B. 69 Winch. 26.

of legal ownerſhip, not only where the party diſtrained has a general property as every owner hath, but alſo where he has only a ſpecial property, as where a man hath goods in pledge, or where he hath the cattle of another, not abſolutely, but for the purpoſe only of manuring his lands.

4. Replevin alſo, will lie for things wild by nature, if made tame or reclaimed, ſo long as they continue in that ſtate, as for a *leveret*, or a *ferret*, or a *ſwarm of bees*; for they poſſeſs the *animus revertendi*, and though they rove at large, they return to the dominion of their owner; but animals though domeſticated, as *dogs*, *bears*, *cats*, *apes*, *parrots*, and *ſinging birds* which are only kept for pleaſure, curioſity, or whim, are not *repleviſable*, though perhaps an action of *treſpaſs* will lie for taking them. (*a*)

(*a*) *Sed quære*, for the general rule ſeems to be that *replevin* lies for any thing that may by law be *diſtrained*.

5. Replevin will not lie of trees or timber growing, nor of things annexed to the freehold, becauſe ſuch things cannot be diſtrained, but it will lie for a certain iron or other implement or utenſil belonging to the party's mill.

F. N. B. 68. Moor 394. 2 Brownl. 139.

6. Replevin will not lie for deeds or charters concerning lands, for they are only valuable by relation to the lands, nor will it lie for money, nor for leather made into ſhoes; nor for goods taken beyond the ſeas, and afterwards brought into *England*.

2 Stra. 1084.

7. Replevin will not lie for goods taken in execution or upon a *conviction*.

8. But in thoſe caſes where *replevin* will not lie, an action of *detinue* may be brought to recover *in ſpecie* the deeds, goods, *&c.* wrongfully detained.

III. *The different Kinds of Replevin.*

3 Bl. Com. 147. 2 Inſt. 139.

9. The party diſtrained upon had formerly no other mode of trying the right to the diſtreſs than by the old common law proceſs of *replegiari facias* or *writ* of replevin; which iſſued out of chancery commanding the ſheriff to deliver the diſtreſs to the owner, and afterwards to do juſtice in reſpect to the matter in diſpute in his COUNTY COURT: But this being a tedious method of proceeding, the beaſts or other goods were long detained from the owner to his great loſs and damage.

10. To remedy this miſchief it is directed by the 52 *Hen.* 3. *c.* 21. commonly called the ſtatute of *Marlbridge*, "That (without ſuing a writ out of the chancery) if the "beaſts of any perſon be taken and wrongfully withholden "the ſheriff after complaint made to him thereof may de- "liver them without let or gainſaying of him that took the "beaſts

" beasts if they were taken out of liberties; and if they " were taken within liberties, and the bailiffs of the liberty " will not deliver them, then the sheriff for default of " those bailiffs shall cause them to be delivered."

11. And for the greater ease of the parties it is further provided by the statute of the 1 *Philip & Mary, c.* 12. That the sheriff shall make, at least, four deputies in each county dwelling not above twelve miles from each other, for the sole purpose of making replevins, under a penalty of five pounds a month for every month such deputies are wanting.

12. When any man's goods therefore are distrained or impounded he may repair to one of these sheriffs deputies for the purpose, and may there have A REPLEVIN, (upon pledges given to return the distress) to cause the goods distrained to be delivered to the owner.

IV. *Out of what Courts Replevin issues.*

13. THE WRIT of replevin issuing, as we have already observed, out of the court of chancery, is only returnable into the courts of *King's Bench, Common Pleas*, the court of the *Cinque Ports*, and the *County Court*. 2 Inst. 312.

14. The sheriff upon *plaint* made to him without writ may either by *parol* or *precept* command his bailiff to deliver the goods, that is to make *replevin* of them, and by these words in the statute of *Marlbridge*, " After complaint made " to him thereof," he may take a plaint out of the *county court* and make *replevin* presently, which he is to enter in the court; for it would be inconvenient and against the scope of the statute, that the owner for whose benefit the statute was made should tarry for his beasts till the next *county court*, which is only holden from month to month. 2 Inst. 159. Keb. 205. Dalton Sheriff 230. Buller's Nisi Prius 52.

15. And by this statute the sheriff may hold plea in the county court on REPLEVIN by *plaint* of whatever value the subject in dispute may be, although in other actions he shall only hold plea where the matter is under *forty shillings* value, yet if the king be party or the taking be in right of the crown, or if any thing touching the *freehold* come in question, or *ancient demesne* be pleaded, or if the distrainer *claim property* in the goods and on a writ *de proprietate probanda*, they be found to be his, the sheriff can proceed no further, but must return the proceedings into the Court of King's Bench or Common Pleas to be there, if thought advisable, finally determined. And indeed either party may by the writs

Finch 317. 3 Black. Com. 149. Co. Lit. 145. Brownl. 33. 2 Cromp. Prac. 227.

writs of *pone* and *recordari facias* (*a*) remove a REPLEVIN to theſe ſuperior courts: the plaintiff at pleaſure; the defendant upon reaſonable cauſe; ſo that it is uſual to carry it up in the firſt inſtance to the courts in *Weſtminſter Hall.*

Bro. Replevin 3. Brownl. 33. 1 Ld. Ray. 219.

16. Proceedings in replevin cannot be carried on in the hundred court, court baron, or any other court claiming a juriſdiction over ſuch proceedings by preſcription; and therefore a lord of a hundred cannot preſcribe to grant replevins on plaint.

Carthew 381. Impey's Office of Sheriff 209.

17. The ſheriff is obliged to grant *replevins* in all ſuch caſes as are allowed of by law, and the officer who takes the goods by virtue of a replevin iſſuing for what cauſe ſoever, is not liable to an action of *treſpaſs*, unleſs the party in whoſe poſſeſſion the goods were, claim property in them: And in all caſes of miſbehaviour by the ſheriff or other officers in relation to *replevins*, they are ſubject to the controul of the king's ſuperior courts, and puniſhable by ATTACHMENT for ſuch miſbehaviour.

2 Inſt. 140, 194.

18. If the diſtreſs be made in a *franchiſe* or *bailiwick* the ſheriff is to direct the replevin to the bailiff thereof to deliver the goods upon pledges, and if he make no anſwer or return that he will make no deliverance or the like, then the ſheriff may enter into the liberty and make deliverances; and if the diſtreſs be taken without the liberty and impounded within the liberty then the ſheriff may enter and make delivèrance, and need not firſt make out a warrant to the ſheriff of the liberty.

V. *Of the Pledges in Replevin.*

3 Bl. Com. 147. 2 Inſt. 340. Hutton 77. Dalt. Sh. 433. Impey's Office of Sheriff 208. 4 Bac. Abr. 376. 5 Com. Dig. 326.

19. The ſheriff, when upon complaint made to him he makes replevin, muſt take two kinds of pledges: FIRST, by the common law, that the party replevying will purſue his action againſt the diſtrainer, for which purpoſe he puts in *plegios de proſequendo*, or pledges to proſecute, and SECONDLY, by 13 *Edw.* I. *c.* 1. that if the right be determined againſt him, he will return the diſtreſs again; for which

(*a*) The *pone* is uſed when the proceedings are by *writ of replevin* —The *recordari facias* is a writ to record the proceedings, and when intended to return the ſame into the king's bench or common pleas as the caſe may be; and therefore where THE REPLEVIN is by *plaint* it can only be removed by writ of *recordari*—but if the replevin be in plaint of record it may be removed *certiorari*.—See poſt. ſect. 6. p. 110.

purpoſe

purpoſe he is bound to find *plegii de retorno habendo*, or pledges to make return if return ſhall be adjudged.

20. The ſufficiency of theſe pledges is diſcretionary, but if the ſheriff return inſufficient pledges he ſhall anſwer for the price of the goods himſelf, for inſufficient pledges are no pledges in law. The pledges taken muſt not only be ſufficient in eſtate, *viz.* capable to anſwer in value, but likewiſe ſufficient in law and under no incapacity; and therefore infants, feme coverts, perſons outlawed, *&c.* are not to be taken as pledges, nor are any perſons politic or bodies corporate. The pledges alſo muſt be recorded in the county-court.

10 Co. 102. 2 Inſt. 340. Co. Lit. 145. 2 Inſt. 340. Barnes 8.

21. By the ſtatute *Weſtminſter* an action will lie againſt the ſheriff if he omit to take pledges, as if he take ſuch as are inſufficient (*a*); although the party where the ſuit is in a court of record may have a *ſcire facias* againſt the pledges, and where it is in the county court, a *precept* in the nature of a *ſcire facias*, for he has an *intereſt* in the pledges, of which he would be deprived by the omiſſion to take pledges or taking ſuch as are inſufficient.

Salk. 99. Ld. Ray. 278. Comb. 1. Comyns 593.

22. The high ſheriff, the under-ſheriff, and the replevin clerk are all anſwerable to the defendant in replevin for the ſufficiency of the pledges *de retorno habendo*; and therefore the bail in replevin cannot be excepted againſt in order to compel a juſtification.

2 Black. Rep. 1220.

23. By 11 *Geo.* 2. *c.* 19. For the greater ſecurity of perſons diſtraining *for rent*, it is enacted, "That ſheriffs "and other officers having authority to grant REPLEVINS "ſhall in every replevin of a *diſtreſs for rent* take in their "own names from the plaintiff and two ſureties A BOND "in double the value of the goods diſtrained, ſuch value to "be aſcertained by the oath of one or more witneſſes not "intereſted, (which oath the perſon granting ſuch replevin "is to adminiſter) and conditioned *for* proſecuting the ſuit "with effect and without delay, and for returning the "goods in caſe a return ſhall be awarded before any deli"verance to be made of the diſtreſs; AND ſuch ſheriff or "officer taking ſuch bond, ſhall at the requeſt and coſts of "the AVOWANT or perſon making CONUSANCE aſſign ſuch "bond to the avowant, *&c.* by indorſing the ſame, and

On a *diſtreſs for rent* of the tenant replevy the ſheriff ſhall take a *replevin bond*.

(*a*) Some evidence muſt be given by the plaintiff of the inſufficiency of the pledges, but very ſlight evidence is ſufficient to throw the proof on the ſheriff, for the ſureties are known to him, and he is to take care they are ſufficient. Saunders v. Darling at Niſi Prius after Trinity Term 10 Geo. 3.

"atteſting

" atteſting it under his hand and ſeal in the preſence of " two witneſſes; which may be done without any *ſtamp*, " provided the aſſignment be ſtamped before any action " brought thereon; AND IF the bond be forfeited the " avowant, *&c.* may bring an action thereupon in his own " name; AND THE COURT may by rule give ſuch relief to " the parties upon ſuch bond, as ſhall be agreeable to juſ- " tice, and ſuch rule ſhall have the effect of a defea- " ſance."

1 Ld. Ray. 278.

24. In replevin *a bond*, inſtead of *pledges*, taken by a ſheriff, to proſecute the action with effect for wrongfully taking his gelding, and to make return thereof if return ſhould be adjudged, is good; but he cannot take *gage* inſtead of *pledges*.

The King *v.* Lewis. Trinity 28 Geo. 3. 2 Term Rep. 607.

25. If the ſheriff neglect to take a replevin-bond the party injured may maintain an action; but the court will not grant an attachment againſt him for a contempt.

5 Com. Dig. 436. Carth. 519.

26. If upon a replevin-bond being taken the party in replevin do not enter his plaint in the county-court, the bond will be forfeited, or if afterward he do not proceed; but if the plaintiff enter his plaint and afterward is reſtrained by an injunction out of Chancery until his death whereby the plaint abates, the bond will not be forfeited.

VI. *The Writs and Proceſs in Replevin.*

Impey's Office of Sheriff 209.

27. THE ORIGINAL WRIT in replevin iſſues out of chancery, and is returnable in the nature of a JUSTICIES to impower the ſheriff to hold plea in his county court, where a day is given to the parties; but when the party proceeds by *plaint* THE SHERIFF on receiving the *pledges* or *ſecurities* before deſcribed, is immediately to make his PRECEPT (*a*) directed to his officers commanding them to *replevy* and cauſe to be delivered the cattle, goods and chattels ſo taken into the poſſeſſion of the party ſo diſtrained upon.

(*a*) That he may make replevin by parol, See 2 Inſt. 139. F. N. B. 69. 5 Com. Dig. 324. See the form of the precept, poſt p.

28. If the diſtreſs be conveyed into any houſe, park, caſtle, or other place of ſtrength, and the party who diſtrains refuſe to deliver them to be replevied, the ſheriff may take the POSSE COMMITATUS and, on *requeſt* and *refuſal*, may break open the ſame and make deliverance.

The ſtatute of Weſtminſter the firſt 3 Edw. 1. c. 17. See alſo the Year Book. 8 Hen. 4. pl. 19. and 5 Com. Dig. 324.

29. But if the defendant in replevin claim a property in them; the party replevying muſt ſue out a writ DE PROPRIETATE PROBANDA in which the ſheriff is to try by an inqueſt in whom the property previous to the diſtreſs ſubſiſted:

Finch 316. Dalt. 274.

ed: and the ſheriff muſt give notice of the time and place of executing this writ.

30. If the diſtreſs be carried out of the county or concealed, the ſheriff may return that the beaſts, goods and chattels are carried to a diſtance to places to him unknown or *eloigned*, and thereupon the party replevying ſhall have a writ of CAPIAS IN WITHERNAM or in VETITO NAMIO (*a*) in order to obtain a ſecond or reciprocal diſtreſs in lieu of the firſt which was *eloigned*. This writ is a command to the ſheriff to take other goods of the diſtrainer in lieu of the diſtreſs formerly taken and eloigned, or withheld from the owner. So that here is now *diſtreſs* againſt *diſtreſs*; one being taken to anſwer the other by way of repriſal and as a puniſhment for the illegal behaviour of the original diſtrainer: For which reaſon goods taken under a WRIT OF WITHERNAM cannot be replevied until the original diſtreſs is forthcoming.

F. N. B. 73. Dalton's Sheriff 276. 4 Bac. Abr. 380. 5 Com. Dig. 323.

(*a*) Year Book 9 Edw. 4. pl. 48. 11 Hen. 4. pl. 15. Fitzherbert's Natura Brevium 69, 70.

Ray. 475.

31. A replevin granted, of the perſon who takes the diſtreſs AVOWS or if his bailiff make CONUSANCE and prove the diſtreſs to be lawfully taken, or if upon removal of the plaint into the courts above, the plaintiff whoſe cattle were replevied make default or do not declare or proſecute his action and thereby becomes nonſuited, or if a verdict be given againſt him, then the party diſtraining or defendant in replevin ſhall have a writ DE RETORNO HABENDO; which is *a judicial writ* and not a *returnable proceſs*, and therefore if on the *pluries* the ſheriff return that the cattle, goods or chattels are *eloigned* he ſhall have a *ſcire facias* againſt the pledges (*b*) and if they have nothing (*c*) then he ſhall have a WITHERNAM againſt the plaintiff's own cattle.

The Year Book 36 Hen. 6. pl. 40. Dyer 280. Co. Lit. 145. Coke's Entries 59. 2 Roll. Abr. 433. F. N. B. 172. Sed vide Saunders v. Forteſcue. Hilary 23 Geo. 2. 1 Wilſ. 256.

(*b*) By 13 Edw. 1. c. 1.

(*c*) See Salk. 581.

32. If the plaintiff be nonſuited in replevin, and his cattle are afterwards taken again for the ſame cauſe he may have a writ of SECOND DELIVERANCE for his cattle or goods, whether the nonſuit be after or before avowry—This is a *judicial* and not an *original* writ; it iſſues out of the record upon which the nonſuit was had; and muſt be conformable to it—this writ is not taken away by the ſtatute of 11 *Geo.* 2. *c.* 19. neither is it a *ſuperſedeas* to a WRIT of INQUIRY of damages; but after ſerving this writ the defendant cannot proceed on the RETORNO HABENDO.

5 Com. Dig. 323. F. N. B. 72. See the ſtat. Weſt. 2. 13 Edw. 1. c. 2. 2 Inſt. 341. 2 Roll. Rep. 97. Barnes Notes 437.

33. By 13 *Edw.* 1. *c.* 2. If the party replevying again make default, or if for any other cauſe, a *return of the diſtreſs* now twice replevied, be awarded, the diſtreſs ſhall remain *irrepleviſable*.

2 Eſpinaſs 55.

34. As

34. As replevin is *vicontiel* and determinable in the inferior court where the ſuitors are judges both of the law and the fact, the law has appointed *two writs* to remove ſuch cauſes out of inferior courts to the ſuperior, *viz.* the writ of PONE and RECORDARI.

The writ of Pone.

35. The WRIT OF PONE is uſed when the proceedings are by *writ* of *replevin*, for that writ gives the ſuperior court authority to proceed in ſuch ſuit or plaint, whether the proceedings below are recorded or not, as the ſuperior court wants no record from below, when they have the king's writ with them.

The Recordari.

36. The WRIT OF RECORDARI is a writ to record the proceedings, and when recorded to return the ſame into the king's bench or common pleas, as the caſe may be; it gives inferior courts authority to record proceedings that were not of record before, and if the replevin was by plaint it muſt be removed by writ of *recordari*, becauſe the court muſt have their authority by proceeding returned to them of record.—NOTE: If the defendant be without *addition* in the *plaint* he can have none in the *recordari* yet he may be *outlawed*.

See the ſtat. 1 Hen. 5. c. 5.

3 Bl. Com. 149. Ante 106.

37. A plaintiff in replevin may remove his writ of replevin or plaint out of an inferior court, either by *pone* or *recordari*, without ſhewing any cauſe for ſuch removal, as it is an act in his own delay; but a defendant in replevin, cannot without ſhewing a ſufficient cauſe, which muſt appear upon record.

38. There are ſeveral cauſes of removal at common law and (when removed) the cauſe is inſerted in the writ after the *teſte* thereof.

39. If the plaint be removed by defendant by PONE at the *day in bank*, the plaintiff ſhall be demanded under peril of a nonſuit, and if he make default, a return is to be awarded to the ſaid writ, but no proceſs againſt him; if the plaintiff appear and the defendant makes default, a writ of *diſtringas* ſhall iſſue againſt him, and on the ſame being returned, "*nulla bona*," then a *capias* and *proceſs* of outlawry; if the plaint be removed by the plaintiff by PONE or RECORDARI, if he make default, then ſhall iſſue againſt him a *pone per vadios*, and, a proceſs of outlawry. Theſe writs iſſue out of chancery, and are made out by the proper curſitor of the county, on leaving with him a *præcipe* for that purpoſe.

40. If

40. If the plaintiff in replevin have judgment on a verdict, the jury aſſeſs the damages as in a common action; if on a demurrer, he muſt ſign an interlocutory judgment and execute a WRIT OF INQUIRY (*a*) before he can ſign final judgment or take out execution. The writ of enquiry. (*a*) See the 19 Car. 2. c. poſt.

41. If the *avowant* or defendant have judgment on a verdict, damages are aſſeſſed as aforeſaid: if on a demurrer, or on *non pros* an inquiry muſt be granted to obtain ſuch judgment.

42. If in replevin the plaintiff is nonſuited he cannot have a new replevin, but muſt be relieved by the WRIT OF SECOND DELIVERANCE. Writ of ſecond deliverance.

43. If the plaintiff do not prevail in this writ, the writ of *retorno habendo* is awarded for the avowant irreplevi-ſable, that is, that the avowant ſhall detain and keep the thing taken till the rent or other duty for which they were taken is paid, nor ſhall the plaintiff ever again diſturb the defendant's poſſeſſion by replevin or writ of ſecond deliverance, although if the plaintiff tender the rent, the defendant muſt reſtore the goods, *&c.* or the plaintiff may recover the ſame by an action of *detinue*. Writ of *retorno habendo, irreplevi-ſable.*

44. The writ of ſecond deliverance is a *ſuperſedeas* in law to the ſheriff againſt the writ of *retorno habendo*, and to prevent his executing the ſame; if it come to him after the return is made, it is in the nature of a *new replevin*.

45. If the defendant in replevin cannot get the goods, *&c.* of the plaintiff on the WRIT OF RETORNO HABENDO, and the ſheriff returns the ſame, "*elongata*," the defendant muſt ſue out a *ſcire facias* to ſummon the bail, which brings them into court to ſhew cauſe why the defendant ſhould not have a return of their goods, *&c.* and if no cauſe be ſhewn by them he has a writ to have return of their goods, *&c.* inſtead of the plaintiff; and if their goods, *&c.* prove ſufficient and the ſheriff returns a *nihil* on this, the defendant may have a *ſcire facias* againſt the goods, *&c.* of the ſheriff. The writ of *ſcire facias.*

46. The defendant has another remedy againſt the plaintiff where the ſheriff returns "*elongata*," on the writ DE RETORNO HABENDO, *viz.* a *capias in withernam* againſt plaintiff's goods, *&c.* Withernam.

47. THE WRIT OF RECAPTION lies, where the defendant diſtrains again on the plaintiff for the ſame rent, and if he is convicted thereof, he ſhall be fined to the king. Reception.

48. On the *writ of recaption* the defendant cannot avow as in replevin, becauſe an avowry is to have a return of the pledges; but the defendant muſt juſtify as in *treſpaſs*, and unleſs he can ſupport ſuch ſecond taking, he will be deemed a treſpaſſer.

49. On the WRIT OF RECAPTION, the tenant in his declaration muſt aver, that the *ſecond diſtreſs* was taken for the ſame cauſe as the firſt, or he fails in making out his title to the ſaid writ, and conſequently cannot puniſh the landlord for ſuch ſecond diſtreſs.

VII. *Of the Declaration and Pleas in Replevin.*

50. IN REPLEVIN he whoſe goods are diſtrained and impounded becomes the plaintiff and *declares* againſt the other for unjuſtly taking and detaining his goods or chattels.

F. N. B. 69. 5 Com. Dig. 327. See the form of the declaration poſt p.

51. The DECLARATION in replevin may be laid in the county where the cattle or goods were taken, or in the county into which they are drove after the taking, or in both; it muſt be ſeveral as to every one who has a ſeveral property, for two perſons who have not a joint intereſt cannot join in replevin. It ought to mention *the place* in which the taking was, and although the taking need not be laid where the taking originally was, but in any other place where the cattle were in the defendant's cuſtody, yet if no place be mentioned, or if there be *a blank* left for the place the defendant may demur: So, it ought to mention *the vill* in which the place is, and if there were ſeveral takings in different places it muſt mention how many, deſcribing the ſeveral ſpecies of goods that were taken in each place; if however, it deſcribe the goods with ſuch ſufficient certainty that the ſheriff can make deliverance, it is enough.

Co. Lit. 145. 3 Hen. 4. pl. 16. Strange 1015. B. R. H. 119. 1 Sid. 9. Barnes 353. Cro. Eliz. 896. Moor 678. Ray. 34. Hob. 16. 2 Wilſ. 354.

Stra. 1015.

52. On a cauſe being removed out of the county court the plaintiff muſt declare *de novo*.

Gilb. 147.

53. The plaintiff in *replevin* may declare without a rule from the defendant to force him to do ſo; and if the defendant do not appear, the way to compel his appearance, is by attachment.

James v. Moody Trin. 29 Geo. 3. 1 Term Rep. C. B. 281.

54. The plaint in replevin being removed into the court of common pleas by *recordari facias loquelam*, technically called a *re. fa. lo*; and the defendant having given a rule to declare, he may ſign judgment of *non pros* for want of declaring, without demanding a declaration.

55. PLEAS

55. PLEAS IN REPLEVIN, are generally of four kinds, *viz.* either 1ſt. in abatement. 2d. Pleas in bar. 3dly. In juſtification. 4thly. By way of conuſance. 5thly. By way of avowry. 6thly. The general iſſue. 7thly. The plaintiff's plea in bar. 4 Bac. Abr. 388. 5 Com. Dig. 329.

56. ABATEMENT.—The defendant in replevin may plead in abatement that the goods were taken in another county; or that the property is in him; or part of it is in him; or in a ſtranger; or in the plaintiff and a ſtranger, and not in the plaintiff: So alſo the defendant may plead *bailment* to him by the plaintiff; for which *detinue* lies, but not *replevin*. Barnes 353. Aſhton 475. Coke's Ent. 314. Cliſt's Ent. 654. Co. Lit. 145. Leach's edition of Cro. Eliz. 475. See the manner of concluding a plea in abatement. 2 Ld. Ray. 1028.

57. BAR. The defendant in replevin may plead in bar the general iſſue *non cepit*, either to the whole or to part; but he cannot plead *non cepit infra ſex annos*, for this does not anſwer the detainer. So the defendant may plead, "*property*," in *bar* as well as in *abatement* (*a*); and, if upon the evidence he prove property in a leſs number of cattle than he pleads for it is ſufficient: ſo, alſo he may plead "*a releaſe*" in bar: or he may plead to the *juriſdiction*.—So, alſo he may plead the ſtatute of limitation; for by 21 *Jac.* 1. *c.* 16. the action of replevin muſt be brought within *ſix years* after the cauſe of action accrued. 1 Bro. Ent. 312. 2 Mod. 199. Lutw. 1131. 4 Mod. 183. Salk. 581. 1 Sid. 81. Show. 401. 1 Salk 94. (*a*) Sed quere vide 2 Ld. Ray. 984. 5 Com. Dig. 330.

58. JUSTIFICATION. The defendant, in replevin, may plead a plea in *juſtification*, without making either *avowry* or *conuſance*; but if he juſtify, he cannot have a return of the thing taken: But, if the defendant had lawful cauſe for the taking, the moſt proper and uſual caſe is to make *avowry* or *conuſance*. 3 Lev. 205. 1 Roll. Abr. 319.

59. AVOWRY is in the nature of a bar, and imports a *juſtification* of taking in his own right, or in right of his wife; or, as it is otherwiſe deſcribed, it is the ſetting forth, as in a declaration, the nature and merits of the defendant's caſe, and the ſhewing that the diſtreſs taken by himſelf was lawful. Thus, if a landlord diſtrain for rent in arrear, and the tenant or owner of the cattle bring a replevin, and the defendant declare againſt him for unjuſtly taking and detaining his cattle, and the defendant *juſtifies*, that he took them in his own right, and ſo ſhews the cauſe of his taking in his plea; this is an AVOWRY; which muſt contain ſufficient certainty to intitle the avowant to a *retorno habendo*. Cro. Jac. 436. 1 Roll. Abr. 314. 320. 5 Com. Dig. 330. Danvers 510. 2 Co. 25. 9 Co. 20. 8 Co. 69. Vent. 99. Cro. Jac. 160. Dyer 280. Co. Lit. 268. See 21 Hen. 8. c. 19. Mod. Ca. 103. 2 Saund. 195. 1 Salk. 93. Strange 507.

60. The moſt uſual avowry is upon a diſtreſs made for *rent* and *ſervices*, in which the defendant muſt alledge, in 3 Lev. 142. Winch's Entries 823.

certain, what lands are held in right of his wife or of his LORD, and by what tenure; as for rent, homage, fealty, ſuit of court, heriot ſervice, &c. (a) And he muſt alledge *ſeiſin*, by the hands of ſome certain perſon who has the freehold at leaſt; but a ſeiſin, in law, is ſufficient, and it need not be alledged within fifty years. (b) If the avowry be for rent upon a reſervation, he muſt ſhew that he, or that ſuch a perſon from whence the reverſion deſcended or was aſſigned, was *ſeiſed* and made a leaſe to the plaintiff at years or at will; for if he only ſay that *A. having title*, demiſed to him, and he to the plaintiff, it will be bad; for he ſhould ſhew the commencement of the *particular eſtate*. (c) But he need not ſhew ſeiſin of *the rent*, where he avows upon a reverſion; for it is ſufficient that he has the reverſion.

(a) But this is now unneceſſary by 11 Geo. 2. c. 19. vide infra.

6 Co. 59. Co. Lit. 268. 9 Co. 36. 4 Co. 9.

(b) See 32 Hen. 8 c. 2. 2 Saund. 300. Strange. 796. Roll. Abr. 314.

61. In replevin for cattle taken *26th September*, the defendant avowed the taking as a diſtreſs for rent reſerved on a leaſe for years, which was made under the title of *Chriſtopher*, late duke of *Albemarle*, and for the rent of two years and an half, ending at *Michaelmas*, *29th September*, &c. he avowed: It was aſſigned for error, that the diſtreſs was made before *Michaelmas* when the rent was in arrear: THE COURT, without difficulty, reverſed the judgment; for the avowry is for one *intire rent* of two years; but before judgment the avowant might have *abated* his own avowry for the *half year*, and prayed judgment for the reſidue, and this would have been good.

Mich. 9 W. 3. Richards *v.* Corneford, in B. R. Comyn's Rep. 42. pl. 26. Ld. Raym. 255.

62. When the plaintiff in replevin makes conuſance and avows that the property is in himſelf, it ſeems to be ſufficient without a traverſe.

Comyn's Rep. 247. pl. 137.

63. By 32 *Hen.* 8. *c.* 37. The executors and adminiſtrators of tenants in fee, fee-tail, or for life, or rent ſervices, and indeed to all *tenants for life*, may *diſtrain* upon the land chargeable, ſo long as they remain in poſſeſſion of the tenant, who ought to have paid; and may make *avowry* or *conuſance*, in caſe ſuch *diſtreſs* be *replevied*: But this act does not extend to rents iſſuing out of copyholds.

See Buller's Niſi Prius 56.

64. CONUSANCE imports a juſtification of the taking in right of another, as his bailiff or ſervant; that is, the de-

5 Com. Dig. 331. 3 Bl. Com. 147.

(c) The general rule of pleading is, that where a title is made under a *particular eſtate*, the commencement of that eſtate muſt be ſhewn; but that an eſtate *in fee* may be alledged generally, 4 Bac. Abr. 395. But ſee 11 Geo. 2, c. 19. poſt.

fendant,

fendant, in replevin, acknowledges the taking, but inſiſts, that ſuch taking was legal, as he acted by the command of one who had a right to diſtrain; and, therefore, one defendant may *avow*, and the other make *conuſance* in his right; but if the defendant make conuſance as bailiff or ſervant, he need not ſhew his authority.

Yelv. 108.

4 Mod. 378.

65. But great difficulties having often ariſen in making avowries and conuſance upon diſtreſſes for rent, quit rents, reliefs, heriots, and other tenures; IT IS ENACTED by 11 *Geo.* 2. *c.* 19. "that it ſhall and may be lawful to and "for all defendants in replevin to make conuſance "generally, that the plaintiff in replevin, or other tenant "of the lands, and tenements whereon ſuch diſtreſs was "made or enjoyed, the ſame under a grant or demiſe at "ſuch a certain rent, during the time wherein the rent "diſtrained for was incurred, which rent was then and "ſtill remains due, or that the place where the diſtreſs "was taken, was parcel of ſuch certain tenements held of "ſuch honor, lordſhip, or manor, for which tenement, "the rent, relief, heriot, or other ſervice diſtrained for, "was, at the time of ſuch diſtreſs, and ſtill remains, due, "without further ſetting forth the grant, tenure, demiſe, "or title of ſuch landlord or landlords, leſſor or leſſors, "owner or owners of ſuch manor; any law or uſage to the "contrary notwithſtanding; and, if the plaintiff or plain-"tiffs in ſuch action, ſhall become nonſuit, diſcontinue "his, her, or their action, or have judgment given againſt "him, her, or them, the defendant, in ſuch replevin, ſhall "recover double coſts of ſuit."

LANDLORDS may *avow* or make *conuſance*, GENERALLY in replevin on a diſtreſs for rent, &c.

66. In an avowry and conuſance to a declaration in replevin for rent of land due under a *parol demiſe*, the plaintiff, in replevin, pleaded an iſſue to the country; and alſo, by leave of the court, a plea in bar, "that at the time when the defendant is ſuppoſed to have made the demiſe in the avowry mentioned, he had not any eſtate in the land whereby he could make ſuch demiſe; and the queſtion was, whether this was a good plea under the 11 *Geo.* 2. *c.* 19. It was argued twice before the judges of the common pleas, and they were unanimouſly of opinion, that it is *a bad plea*, for that THE STATUTE being made for the advantage of landlords, and to prevent tenants putting them to difficulties in recovering their rents, the tenant is thereby *eſtopped* to call upon the landlord to ſhew his title in reply.

Sullivan *v.* Stradling, Hilary Term 4 Geo. 3. in Common Pleas. 2 Wilſ. 208 to 219.

Dougl. 283.

67. Since the ſtatute 4 *Ann. c.* 16. *attornment* need not be averred in a declaration on a covenant or in an *avowry* in replevin for rent.

1 Term. Rep. in C. B. 24.

68. The plaintiff in *replevin* may pay the *rent* into court for which the defendant avows.

Gilbert's Replevin 174.

69. THE GENERAL ISSUE in *replevin* is *non cepit*, but the caption and detention only is in iſſue by this plea, and not the property.

5 Com. Dig 335. 9 Co. 34. Co. Jac. 127.

70. THE PLAINTIFF IN BAR of the avowry may *diſclaim*, or confeſs the avowry, or plead "*out of his fee*," or "*non-tenure*" generally; or he may confeſs the tenure in part, and traverſe the tenure *modo et forma*; and if it be found for the plaintiff, he ſhall have judgment; though the avowry was for *rent*, the tenure by which was confeſſed. So ſince the 32 *Hen.* 8. *c.* 2. he may plead never ſeiſed within fifty years.

Lutw. 1212.

9 Co. 36. Cro. Eliz. 799.

8 Co. 64.

Barnes 450.

71. On an avowry for rent, and iſſue thereon, the plaintiff cannot give evidence to ſet off a mutual debt; but by way of ſpecial plea to the avowry, he may plead that the defendant is indebted to him in a greater amount than the rent; and indeed he may plead all pleas allowed by the common law, except *diſclaimer*.

Co. Lit. 268.

2 Saund. 312. 5 Com. Dig. 335.

72. So alſo he may plead in bar to the avowry "*non demiſit*"—"*nothing in arrear*," &c.—but he cannot, as we have already ſtated, plead *nihil tenementis*. (*a*) So alſo the plaintiff may ſay, that it is his freehold, or the freehold of *A.* and that by his licence he put his cattle there.

(*a*) Ante pl. 66.

3 Wilſ. 295.

73. In replevin for taking his cattle in the *road*, the defendant avowed the taking for *damage feaſant*, in a certain place containing five acres, and that he drove them along the road to impound them. The plaintiff pleaded in bar, that the road is not parcel of the five acres; but, upon demurrer, the avowry was held good, and the plea in bar ill.

Nichols v. Newman, Eaſter, 3 Geo. 2. Forteſcue 209. 301. Lutwidge v. Jameſon, Mich. 4 Geo. 2. C. B. Fort. 210.

74. In debt in a replevin bond, it is a bad plea that the defendant appeared at the county court, for he muſt follow it, wherever removed, to the end of the cauſe. So alſo it is a bad plea to an action on ſuch a bond, to ſay that he had performed all conditions; for he ſhould plead that he did indemnify.

Vaughan v. Norris, Trinity, 2 Geo. 2. B. R. H. 137.

75. If an action of debt be brought on a replevin bond, for not proſecuting in the county court with effect, and the defendant plead, that he did then and there proſecute with

with effect, the plaintiff may reply, that *he* removed it by *recordari* into the common pleas.

VIII. *Of the Writ of Enquiry.*

1. By 21 *Hen.* 8. *c.* 19. every avowant, or other person that makes avowry or conuſance, or juſtifies as bailiff in *replevin* or ſecond deliverance for *rents*, cuſtoms, ſervices, or *damage feaſant*, if the plaintiffs be bound, ſhall recover *damages* and *coſts*. See Cro. Eliz. 257 300. 329.

2. By 17 *Car.* 2. *c.* 7. "Whereſoever any plaintiff in "replevin ſhall be non-ſuit, before iſſue joined in any ſuit "in replevin by *plaint*, a *writ* lawfully returned, removed, "or depending in any of the king's courts at *Weſtminſter*, "the defendant making a ſuggeſtion in nature of an *avowry* "or *cognizance* for *rent*, to aſcertain the court the cauſe of "the diſtreſs; the court, upon his prayer, ſhall award a "writ to the ſheriff of the county where the diſtreſs was "taken, to enquire, by the oaths of twelve good and lawful men of his bailiwick, touching the ſum in arrear at "the time of ſuch diſtreſs taken, and the value of the goods "and cattle diſtrained: AND thereupon notice of *fifteen* "*days* ſhall be given to the plaintiff or his attorney, in court, "of the ſitting of ſuch enquiry; AND THEREUPON the "ſheriff ſhall enquire of the truth of the matter contained in "ſuch writ, by the oaths of twelve good and lawful men of "his country; (*a*) AND UPON the return of ſuch inquiſition, "the defendant ſhall have judgment to recover againſt the "plaintiff the damages of ſuch rent, *in caſe* the goods or "cattle diſtrained ſhall amount unto that value; AND IN "CASE they ſhall not amount to that value, then ſo much "of the value of the ſaid goods and cattle, ſo diſtrained, "ſhall amount unto, TOGETHER with his *full coſts* of ſuit, "and ſhall have execution, by *fieri facias*, or *elegit*, or "otherwiſe, as the law requires; AND IN CASE ſuch plaintiff ſhall be nonſuit after cognizance or avowry made, "and iſſue joined, or if the verdict ſhall be given againſt "ſuch plaintiff; then the jurors impannelled to try the "cauſe, ſhall, at the prayer of the defendant, inquire concerning the ſum of the arrears, and the value of the "goods or cattle ſo diſtrained; and thereupon the avowant, or he that makes cognizance, ſhall have judgment "for ſuch arrears, or ſo much thereof, as the goods and

If the plaintiff in *replevin* be nonſuited before iſſue joined, the defendant, on a ſuggeſtion in nature of *avowry* or *cognizance*, ſhall have a WRIT OF INQUIRY.

(*a*) The whole fact is to be proved, and may be litigated on the writ of inquiry. Bull. N. P. 5th Edit. 58.

1 Lev. 255. 1 Vent. 40.

" cattle ſo diſtrained amount unto, together with his full " coſts, &c."

3. " And if judgment, in any of the courts aforeſaid, " be given upon demurrer for the avowant, or him that " maketh cognizance for any rent, the court ſhall, at the " prayer of the defendant, award a writ to enquire of the " value of ſuch diſtreſs; and upon the return thereof, " judgment ſhall be given for the avowant, or him that " makes cognizance, as aforeſaid, for the arrear alledged to " be behind in ſuch avowry or cognizance, if the goods or " cattle ſo diſtrained ſhall amount to that value, and in caſe " they ſhall not amount to that value, then for ſo much " as the ſaid goods or cattle ſo diſtrained amount unto, to- " gether with his full coſts of ſuit, and ſhall have like ex- " ecution as aforeſaid."

Waterman *v.* Yea. 2 Wilſ. 41. 2 Eſpinaſſe's Digeſt 51.

4. If the plaintiff be nonſuited for want of a plea in bar to the avowry, the avowant may either execute a writ of enquiry of damages, or ſue upon the replevin bond.

Cooper *v.* Shalrook. 2 Wilſ. 116. Latch. 72. 3 Wilſ. 462.

5. On a nonſuit, in replevin, for want of a declaration, the avowant may execute a writ of enquiry of damages, after a writ of ſecond deliverance.

(*a*) Duvell *v.* Marſhal. 2 Black. Rep. 921.

6. If the jury, at the trial, omit to aſſeſs the avowant his damages, a writ of enquiry ſhall iſſue.

(*b*) Freeman *v.* Lady Archer, 2 Black. Rep. 763. But ſee 2 Eſpinaſſe's Niſi Prius 53.

7. In replevin of a diſtreſs taken for a poors rate, a writ of enquiry may be executed on a defective verdict; (*a*) but, it is doubtful, if ſuch a writ can be executed on a defective verdict in replevin on a diſtreſs for rent. (*b*)

IX. *Of Coſts in Replevin.*

Sayer's Laws of Coſts 4. 103.

1. DAMAGES being recoverable at the common law, in an action of *replevin*, or in an action of *ſecond deliverance*, or PLAINTIFF in either of theſe actions, may recover coſts, under the ſtatute of *Glouceſter*, which after enumerating the ſeveral caſes, in which a *demandant* ſhall recover coſts, ſays, that the act ſhall hold, in all caſes, where a man recovers damages.

2 Com. Dig. 548.

2. By 7 *Hen.* 8. *c.* 4. " Every avowant, and every " other perſon that makes avowry or cognizance or juſtifies, " as bailiff to any perſon, in a replegiare or ſecond de- " liverance, for any rent, cuſtom, or ſervice, if his avowry, " cognizance, or juſtification be found for him, or the " plaintiff be otherwiſe barred, ſhall recover his damages

" and

" and coſts that he has ſuſtained, as the plaintiff ſhould " have done if he had recovered."

3. By 21 *Hen.* 8. *c.* 19. " Every avowant, and every " perſon that makes any avowry, juſtification, or cogni- " ſance, as bailiff or ſervant to any perſon in any reple- " giare, or ſecond deliverance for rent, cuſtom, ſervice, " or for damage feaſant, or other rent, upon any diſtreſs " taken in any lands or tenements, if the avowry, juſ- " tification, or cogniſance be found for him, or the plain- " tiff be nonſuit or otherwiſe barred, that then he ſhall " recover his damages and coſts againſt the plaintiff, as the " plaintiff ſhould have done if he had recovered." 1 Jones 135. Cro. Jac. 473. Bull. N. P. 57.

4. An executor or adminiſtrator, who *avow* in right of their teſtator or inteſtate, under the 32 *Hen.* 8. *c.* 37. are entitled to coſts. Fanel *v.* Hughley. 2 Roll. Rep. 437.

5. By 17 *Car.* 2. *c.* 7. *ſ.* 2. the ſheriff is empowered to execute a writ of enquiry, whenſoever the plaintiff in replevin for rent ſhall be nonſuit in the ſuperior courts, and to give the avowant, or he that makes cogniſance, judgment for the arrears or value of the goods diſtrained, together with his full coſts of ſuit. Bull. N. P. 58.

6. By 11 *Geo.* 2. *c.* 19. *ſ.* 22. the defendant, in replevin for rent, is allowed to avow or make conuſance generally, without ſpecially alledging the title under which the diſtreſs was made; and if the plaintiff ſhall, in ſuch action, become nonſuit, diſcontinue his action, or have judgment given againſt him, the defendant ſhall recover double coſts of ſuit. Bull. N. P. 60.

7. If a defendant plead in abatement, in replevin, and have judgment on that plea, he ſhall not have coſts; for neither the 7 *Hen.* 8. *c.* 4. nor the 21 *Hen.* 8. *c.* 19. extends to this caſe. Comyn's 122.

8. An avowant, who in an action of replevin, has pleaded properly in the thing diſtrained, cannot recover coſts. Hard. 153.

9. A defendant, in replevin, who avows for an amerciament in a court leet, or for taking an eſtray, is intitled to coſts. Cro. Eliz. 300. 330 Cro. Jac. 520.

10. A defendant, in replevin, who avows the taking on a *heriot cuſtom*, is not, on the plaintiff being nonſuited, entitled to coſts under 11 *Geo.* 2. *c.* 19. for though a diſtreſs may be made for a *heriot ſervice*, it cannot for a *heriot cuſtom*. Lloyd *v.* Winten 2 Barne's Sup. 16. Sayer's Coſts 107.

Barne's 146.

11. If ſome iſſues be found for an avowant, and ſome againſt him; the coſts for one ſhall be deducted out of the other. So alſo an avowant ſhall pay coſts on the *ſpecial avowries* being found againſt him; and ſhall not have coſts on the affirmance of a judgment, in his favour, on a *writ* of error.

Stonew. Forſyth, Trinity, 22 Geo. 3. Dougl. 709. note (2.)

Davis v. Jones, 1 Term Rep. 372.

12. In all caſes, when a cauſe is removed into the king's bench, from an inferior court, by a *recordari facias loquelam*, and the plaintiff does not proſecute his ſuit, the defendant is intitled to ſign judgment, and to have his coſts by the ſtatute 4 *Jac. c.* 3.

Dodd v. Joddrell, 2 Term Rep. 235.

13. Where ſome iſſues, in *replevin*, are found for the plaintiff, which intitle him to judgment, and ſome for the defendant; the defendant muſt be allowed the coſts of the iſſues found for *him*, out of the general coſts of the verdict, unleſs the judge certify that the plaintiff had probable cauſe for pleading the matters on which theſe iſſues are joined.

Ingle v. Wadſworth and others. 3 Burr. 1284.

14. In an action of *replevin* againſt ſeveral defendants, all of whom *avowed* under a right of common, except one who pleaded a *non cepit*, and he was acquitted; and there being no certificate, that there was reaſonable cauſe for making *him* a defendant; it was contended, that he was intitled to coſts, under the 8 & 9 *Will.* 3. *c.* 11. *ſ.* 1. but the court ſaid, that all ſtatutes reſpecting coſts, muſt be conſtrued ſtrictly; and that it was impoſſible to conſider a *replevin*, either as an action or a plaint within this ſtatute, which only ſpeaks *generally* of actions of *treſpaſs*.

Reeſw. Morgan, in error, Trinity 29 Geo. 3. 3 Term Rep. 349.

15. When the defendant, in replevin, made cogniſance for rent in arrear, and the jury found a verdict for him, and damages, to the amount of the rent claimed in his cogniſance, without finding either the *amount of the rent in arrear*, or the *value of the cattle* diſtrained, and judgment was entered for the damages aſſeſſed; the court permitted the defendant to amend his judgment, and to enter a judgment *pro retorno habendo*.

Jones v. Concana, 3 Term Rep. 661. 2 Black. Rep. 375.

16. The court will not give judgment, as in caſe of a nonſuit in *replevin*, under the ſtatute of 14 *Geo.* 2. *c.* 17. for, in replevin, both *plaintiff* and *defendant* are actors, and may give notice of trial, and carry down the cauſe for trial.

X. PRECEDENTS IN REPLEVIN.

1. KNOW ALL MEN by these presents, that WE *C. D.* of, *&c.* in the county of esq; *E. P.* of the same place and county, gent. and *G. H.* of, *&c.* in the same county, grocer, are held and firmly bound to *J. K.* esq; sheriff of the county aforesaid, in the sum of pounds of lawful money of *Great Britain*, to be paid by the said *J. K.* or his certain attorney, executors, administrators or assigns; *for* which payment to be well and truly made, we bind ourselves, and each of us binds himself for the whole and in gross, our heirs, executors and administrators, firmly by these presents, SEALED with our seals, DATED this day day of , 1791, and in the *thirty-first* year of the reign of our sovereign lord *George* the Third, by the grace of God of *Great Britain*, *France*, and *Ireland*, *King*, *Defender of the Faith*, *and so forth*.

The form of the replevin-bond by stat. 11 Geo. 2.

This bond must be on stamps, amounting to six shillings. See ante fol. 54, in margin.

NOW *the condition of this obligation* is such, that if the above bounden *C. D.* shall and do appear at the next *county-court*, to be holden for the county of , at the town of , on the day of next, and there prosecute with effect his suit, which he has commenced against *J. W.* for the taking and unjustly detaining *four cows*, (*or as the case may be*) the goods of him the said *C.* and to make return of the said goods, if a return of the same shall be adjudged; that then this present obligation shall be void and of none effect, or else to remain and be in full force and virtue. SEALED, *&c.*

NOTE: If the tenant in consequence of having entered into the said bond does not prosecute his suit with effect, the landlord may, on application to the sheriff of the county or city where such distress is made, in four days, exclusive of the time limited in such bond for the tenant to prosecute his action in replevin, have an assignment thereof, and proceed thereon against the tenant and his sureties in the same manner that the law allows a plaintiff, to proceed against a defendant and his bail on a common bail-bond.

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2. KNOW ALL MEN by these presents, that I *J. K.* esq; sheriff of the county of , *have*, at the request of the above-

The form of an assignment of a replevin-bond

from the sheriff. above-named *J. W.* the avowant in this cause, assigned over unto him the said *J. W.* this replevin-bond, pursuant to the act of parliament in that case made and provided. IN WITNESS whereof, I have hereunto set my hand and seal of office this day of , in the year

The like stamps.

J. K.

Sealed and *delivered* [being first duly stamped] in the presence of }

K. B. Trinity-term, 31 *Geo.* 3.

A declaration in replevin.

To be engrossed on treble penny.

3. LONDON, to wit. *C. D.* was summoned to answer *A. B.* of a plea, wherefore he took the goods and chattels of the said *A. B.* and them unjustly detained against gages and pledges until, *&c. And whereupon* the said *A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the day of , (*any day after the distress made, and before the suit commenced*) in the year of the reign of our sovereign lord *George* the Third, now king of *Great Britain*, *&c.* at *London*, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, to wit; in a certain place there called , took the goods and chattels following, to wit, (*here insert the things taken, if known particularly; if not, a sufficient quantity of different sorts of household furniture to cover the same*) belonging to him the said *A. B.* and unjustly detained the said things so taken against sureties and pledges until, *&c. whereby* the said *A. B.* says, that he is injured, and hath sustained damages to the value of pounds, and therefore he brings suit, *&c.*

Avowry for rent in replevin.

To be engrossed on treble penny.

4. AND the said *C. T.* by *M. T.* his attorney, comes and defends the force and injury when, *&c.* and well avows the taking, the said goods and chattels in the said place in which, *&c.* and justly, *&c.* because he says, that the same place, in which the taking the said goods and chattels is supposed to be done, contains, and at the same time, when the taking the said goods and chattels is supposed to be done, contained a certain messuage or tenement, with the appurtenances, in the said street called in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, in the city of *London* aforesaid, of which said messuage or tenement, with the appurtenances, before the said time in which, *&c.* one

E. F.

E. F. was ſeiſed in his *demeſne* as of fee; and being ſo ſeiſed, the ſaid *E. F.* before the ſaid time when, &c. to wit, on the day of in year of the reign of our ſovereign lord *George* the Third, at *London* aforeſaid, in the pariſh of *St. Mary-le-Bow*, in the ward of *Cheap* aforeſaid, demiſed the ſaid meſſuage or tenement, with the appurtenances, to the ſaid *C. D.* *To hold* to him the ſaid *C. D.* and his aſſigns, from the day of then laſt paſt, before the date of the ſaid leaſe, for the term of years from thence next enſuing and fully to be complete and ended, by virtue of which ſaid demiſe the ſaid *C. D.* was poſſeſſed of the ſaid meſſuage or tenement, with the appurtenances aforeſaid; and being ſo thereof poſſeſſed, he the ſaid *C. D.* before the ſaid time when, &c. to wit, on the day of , in the ſaid year of the reign of our ſovereign lord *George* the Third, demiſed the ſaid meſſuage or tenement, with the appurtenances, to the ſaid *A. B.* to hold the ſame from the day of then next following, for the term of years from thence next enſuing, and fully to be complete and ended: *Yielding*, therefore, for the ſaid year to the ſaid *C. D.* or his aſſigns, the rent of pounds, of lawful money, &c. at the four uſual times of payment of rent in the year, to wit, on the day of , the day of , the day of , the day of , and the day of , by even and equal portions: By virtue of which ſaid demiſe, the ſaid *A. B.* entered into the ſaid meſſuage or tenement, with the appurtenances, and was poſſeſſed thereof and occupied the ſaid meſſuage or tenement, with the appurtenances, for the ſpace of three quarters of a year; and becauſe the ſum of pounds, of the ſaid rent, after the demiſe ſo made for the time aforeſaid, on the day of laſt paſt, and before the taking the ſaid goods and chattels, was in arrear and unpaid to the ſaid *C. D.* the ſaid *C. D.* well avows the taking the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c. for the ſaid pounds, being in arrear to the ſaid *C. D.* in form aforeſaid, as in the ſaid meſſuage or tenement, with the appurtenances, bound and liable to the diſtreſs of the ſaid *C. D.* in form aforeſaid; and this he is ready to verify; *Wherefore* he prays judgment, and a return of the ſaid goods and chattels to be adjudged to him, &c.

5. And

A plea in bar to an avowry that there is no rent in arrear.

To be engroſſed on treble penny.

5. AND the ſaid *A. B.* ſays, That the ſaid *C. D.* for the reaſons before alledged, ought not to well avow the taking the goods and chattels in the place in which, *&c.* becauſe he ſays, That the ſaid pounds, or any part thereof of the rent aforeſaid, at the ſaid time when, *&c.* was not in arrear or unpaid to the ſaid *C. D.* as the ſaid *C. D.* in his ſaid avowry has above alledged; and this he prays may be enquired of by the county: And the ſaid *C. D.* does ſo likewiſe: THEREFORE it is commanded to the ſheriff, that he cauſe to come before our lord the king, at *Weſtminſter*, from, *&c.* (*the return of the venire*) twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame day is given to the ſaid parties there, *&c.*

NOTE: The above declaration, plea, replication, and award of *venire*, complete THE ISSUE in *replevin*, only adding a memorandum to the declaration and plea, if neceſſary, as in a common action.

In making up the record in replevin, you add *placita's* as in a common action; the *jurata* the ſame, *mutatis mutandis*.

If judgment go by default, or the plaintiff in *replevin* be nonſuited, you muſt execute *a writ of inquiry*.

The form of a writ of inquiry in replevin, where judgment is for defendant on a nonſuit.

To be engroſſed on five ſix-penny ſtamps.

6. GEORGE the Third, *&c.* To the ſheriffs of *London*, greeting: WHEREAS *C. D.* was ſummoned, *&c.* (*as in the declaration and plea, or avowry, to the end thereof*) and the ſame day was given to the ſaid *C. &c.* on which day came the ſaid *C.* into our court before us at *Weſtminſter*, and the ſaid *A.* although ſolemnly called, did not come, nor further proſecute his writ aforeſaid: *Therefore* it is conſidered that the ſaid *A.* take nothing by his writ aforeſaid, but be in *mercy* for his falſe claim thereof; and that the ſaid *C.* do go thereof without day, *&c.* *Therefore* we command you, that according to the form of the ſtatute in ſuch caſe lately made and provided, by the oath of twelve good and lawful men of your county, you diligently inquire how much of the yearly rent aforeſaid, at the ſame time of taking and diſtraining of the goods and chattels aforeſaid, was in arrear and unpaid; and how much the goods and chattels aforeſaid,

aforesaid, so as aforesaid taken and distrained were worth, according to the true value of the same, and the inquisition, which, *&c.* send to us from *(the return of the inquiry)* under your seals, and the seals of those by whose oath you shall take that inquisition, together with this writ. WITNESS, *William* Earl *Mansfield*, at *Westminster*, *&c.*

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7. GEORGE the Third, *&c.* To the sheriff of *Middlesex*, *greeting:* Put by upon the petition of the petitioner, on *(the return)* wheresoever we shall then be in *England*, the plaint which is in your county, by our writ between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and summon by good summoners the aforesaid *C.* that he be then there to answer the aforesaid *A.* hereof: and have there the summoners and this writ.

WITNESS, *&c.*

The form of the writ of PONE.

To be engrossed on a five sixpenny stamp.

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8. GEORGE the Third, *&c.* To the sheriff of *Middlesex*, *greeting:* WE command you, that you cause to be recorded in your full county the plaint which is in the same county, without our writ, between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and have the record before our justices at *Westminster (the return)* wheresoever, *&c.* under your seal, and the seals of four lawful suitors of the same county, of those who were present, at the recording it, and prefix the same day to the parties that they be then there, to proceed in that plaint according to justice, and have there the names of the said four suitors, and this writ. *Witness, &c.*—LET *this writ be executed, if the aforesaid* A. *petition for it, and otherwise not.*

The form of the writ of RECORDARI.

Five sixpenny stamps.

See Fitzherbert's Natura Brevium 4to. Edit. 1756.

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9. GEORGE the Third, *&c.* To the sheriffs of *London*, *greeting:* WHEREAS *A. B.* lately in our court before us at *Westminster*, was summoned to answer to *C. D.* in an action, wherefore he took *(the goods, &c. taken)* the goods, *&c.* of him the said *C. D.* and unjustly detained them against

The form of the writ of RETORNO HABENDO against the plaintiff by default.

Five sixpenny stamps.

againſt ſureties and pledges, *&c.* as he alledged; and the ſaid *C.* afterwards made default in our ſaid court before us, wherefore it was conſidered in our ſame court before us, that he and his pledges for proſecuting ſhould be amerced, and that the ſaid *A.* might depart the court without day, and ſhould have a return of the goods, *&c.* aforeſaid: *Therefore* we command you, that without delay you return the ſaid goods, *&c.* to the ſaid *A.* and you ſhall not deliver them at the complaint of the ſaid *C.* without our writ, which ſhall expreſsly mention the ſaid judgment, and in what manner you execute this writ, you ſhall make appear to us, *(the return)* whereſoever, *&c.* and have you there this writ. *Witneſs, Lloyd* Lord *Kenyon*, at *Weſtminſter*, *&c.*

The form of the writ of SECOND DELIVERANCE.

Five ſixpenny ſtamps.

10. GEORGE the Third, *&c.* To the ſheriffs of *London*, *greeting:* If *C. D.* ſhall give you ſecurity that he will proſecute his claim, and alſo return the goods, *&c.* which in our court before us were lately adjudged to *A. B.* through the default of the ſaid *C.* WE command you, that if by means of our *writ de retorno habendo*, lately directed to you for that purpoſe, you have made a return of the ſaid goods, *&c.* to the ſaid *A. B.* then do you cauſe them to be re-delivered to the ſaid *C. D.* and by ſureties and ſafe pledges compel the ſaid *A.* that he be before us on *(the return)* whereſoever, *&c.* to anſwer to the ſaid *C. D.* for taking and unjuſtly detaining the ſaid goods, *&c.* aforeſaid; and have you there the names of the pledges and this writ. *Witneſs, Lloyd* Lord *Kenyon*, *&c.*

The ſheriff's return to the foregoing writ.

11. BY virtue of this writ to me directed, I have cauſed to be re-delivered to the within named *C. D.* his goods, *&c.* within-mentioned, as I am within commanded to do. The pledges within-named are *John Doe* and *Richard Roe*.

The anſwer of
John Wilkes, Eſq;
and
Frederick Bull, Eſq; } Sheriffs.

12. GEORGE

12. GEORGE the Third, *&c.* To the ſheriff of *Eſſex*, *greeting:* WHEREAS we lately commanded you by our writ, That WHEREAS *C. D.* had been attached by our *writ of ſecond deliverance* to appear in our court before us to anſwer *A. B.* in an action, wherefore he took the cattle of the ſaid *A.* and unjuſtly detained them againſt ſureties and pledges: And the ſaid *A. B.* ſhould depart hence without day, and that the ſaid *A. B.* and his pledges of proſecuting ſhould be amerced: And that the ſaid *C. D.* ſhould have a return of the goods, *&c.* aforeſaid *irreplegiable*, and that you without delay ſhould make a return of thoſe goods, *&c.* to the ſaid *C. D.* to be detained by him *irreplegiable*, and in what manner you ſhould execute that writ, you ſhould make known to us, *(the return)* whereſoever, *&c.* and you at that day retuned to us, that the goods, *&c.* aforeſaid, were *eloigned* by the ſaid *A. B.* to places unknown to you, ſo that you could not return or deliver thoſe goods, *&c.* to the ſaid *C. D.* as you was commanded by the ſaid writ: *Therefore* we command you, that you take ſo many goods, *&c.* of the ſaid *A. B.* to the value of the goods, *&c.* aforeſaid, before taken by the ſaid *A. B.* in *withernam*, and deliver them to the ſaid *C. D* to be kept by him *irreplegiable*, until you can make a return of thoſe goods, *&c.* before taken to the ſaid *C. D.* and in what manner you ſhall execute this our mandate, do you make appear to us on *(the return)* whereſoever, *&c.* and that you cauſe further to be done therein what of right, and according to the laws and cuſtoms of this our kingdom of *Great Britain* you ſhall ſee meet to be done. WE alſo command you, that if the ſaid *C. D.* ſhall make you ſecure of proſecuting his claim, and returning the chattels aforeſaid, if a return thereof ſhould be adjudged, then do you compel the ſaid *A. B.* by ſureties and ſafe pledges, that he be before us *(the return)* whereſoever, *&c.* to anſwer as well to us for the contempt as to the ſaid *C. D.* for his damages and injury done him in this caſe; and have you there this writ. *Witneſs, Lloyd* Lord *Kenyon*, at *Weſtminſter*, *&c.*

The form of the writ of CAPIAS IN WITHERNAM. Five ſixpenny ſtamps.

King's Bench. Hilary Term, 1791.
WESTBROOK, *Spinster*, v. YATES, *Esq.*

	Monies out of pocket. £. s. d.	Agent. £. s. d.	Attorney. £. s. d.
Instructions and warrant to sue -	0 2 7	0 2 7	0 4 4
Defendant having seized for double rent, attending upwards of three hours, making the replevin, &c. -	0 0 0	0 6 8	0 13 4
Paid under-sheriff for replevin bond, and his fee - - -	3 3 0	3 3 0	3 3 0
Paid officer for restoring goods -	0 10 6	0 10 6	0 10 6
Paid auctioneer appraising same, and swearing to the value - -	0 10 6	0 10 6	0 10 6
Drawing PRECIPE for *re. fa. lo.* and copy - - - - -		0 1 6	0 3 0
Paid for *re. fa. lo.* and fee - -	0 5 0	0 8 4	0 11 8
Paid returning - - -	1 0 0	1 0 0	1 0 0
Attending for that purpose - -	0 0 0	0 1 8	0 3 4
Letters and porters - -	0 0 0	0 1 0	0 2 0

Easter Term, 1791.

Instructions for declaration - -	0 0 0	0 1 8	0 3 4
Drawing same folio 6. - -	0 0 0	0 3 0	0 6 0
Paid to *special pleader* to settle same -	0 10 6	0 10 6	0 10 6
Attending and instructing him -	0 0 0	0 1 8	0 3 4
Engrossing declaration, stamps and warrant - - - - -	0 0 3	0 1 3	0 2 3
Notice of declaration, copy and service - - -	0 0 0	0 1 6	0 3 0
		0 1 6	0 3 0
Rule to avow - - -	0 1 10	0 2 2	0 2 6
Searching for and demanding avowry	0 0 0	0 2 8	0 5 4
Instructions to COUNSEL on motion to plead several matters - -	0 0 0	0 1 3	0 2 6
Paid him a fee thereon of - -	0 10 6	0 10 6	0 10 6
Attending him and court - -	0 0 0	0 1 8	0 3 4
Paid for rule thereon - -	0 6 0	0 6 0	0 6 0
Copy and service - - -	0 0 0	0 1 6	0 3 0
Drawing plea in bar to avowry, folio 9	0 0 0	0 4 6	0 9 0
Fee to COUNSEL to settle and sign same	1 1 0	1 1 0	1 1 0
Attending thereon - - -	0 0 0	0 1 8	0 3 4
Engrossing plea to file and duty -	0 0 3	0 1 9	0 3 3
Rule to reply - - -	0 1 10	0 2 2	0 2 6

(*a*) NOTE: The items and charges in this bill of costs, have been compared with, and corrected by the bill of costs, for plaintiff in replevin, in the case of *Squires* v. *Elliot*, B. R. Trinity Term 1786; which underwent a regular *taxation* by THE MASTER, and is published in "The Attorney and Agent's Table of Costs," published by *Whieldon* and *Butterworth*, in *Fleet-street*, 1789.

	Monies out of pocket. £.	s.	d.	Agent. £.	s.	d.	Attorney. £.	s.	d.
Searching for and demanding replication	0	0	0	0	2	8	0	5	4
Paid for paper-book, fol. 34	2	1	2	2	1	2	2	1	2
Copy thereof for uſe	0	0	0	0	5	8	0	11	4
Entring ſame on roll, and paid	0	10	8	0	16	8	1	2	8
Warrants and docket	0	3	0	0	3	4	0	3	8
Notice of trial, copy, and ſervice	0	0	0	0	1	6	0	3	0
Drawing *placita* and *jurata*	0	0	0	0	1	6	0	3	0
Engroſſing record	0	0	0	0	6	6	0	13	0
Parchment and ſtamps	0	8	0	0	8	0	0	8	0
Writ of *venire*, duty, ſealing, and fee	0	3	2	0	5	7	0	8	0
Attending ſheriff's office to get ſame returned	0	0	0	0	2	8	0	5	4
Writ of *diſtringas*, duty, ſealing and fee	0	3	2	0	5	10	0	8	6
Paid returning ſame	0	14	0	0	14	0	0	14	0
Attending for that purpoſe	0	0	0	0	1	8	0	3	4
Paid ſigning record	0	1	0	0	1	0	0	1	0
Paid clerk of treaſury and ſealer	1	18	0	1	18	0	1	18	0
Fee on paſſing record	0	0	0	0	3	4	0	6	8
Paid entring cauſe	0	11	8	0	11	8	0	11	8
Attending thereon	0	0	0	0	1	8	0	3	4
Attending defendant's attorney to ſettle facts and papers to be admitted on either ſide, and drawing conſent for that purpoſe	0	0	0	0	3	4	0	6	8
Writ of *ſubpœna*, ſigning, ſealing, duty and fee	0	4	10	0	6	6	0	8	2
Two tickets or copies	0	0	0	0	1	0	0	2	0
Serving two witneſſes	0	0	0	0	2	6	0	5	0
Paid each one ſhilling for their expences	0	2	0	0	2	0	0	2	0
Attending to take inſtructions for brief, for trial	0	0	0	0	3	4	0	6	8
Drawing ſame, fol. 6. or three brief ſheets, ſix ſhillings and eight-pence each	0	0	0	1	0	0	2	0	0
Attending the witneſſes to examine them, and to take minutes of their evidence	0	0	0	0	3	4	0	6	

	Monies out of pocket. £. s. d.	Agent. £. s. d.	Attorney. £. s. d.
Three fair copies of brief, at the rate of three ſhillings and four-pence each brief ſheet - - -	0 0 0	0 15 0	1 10 0
Three copies of conſent, &c. to annex to brief - - -	0 0 0	0 2 3	0 4 6
Paid to Mr. *Erſkine*, a conſultation fee of - - -	1 1 0	1 1 0	1 1 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him thereon - -	0 0 0	0 1 8	0 3 4
The like fee to Mr. *Partington* -	1 1 0	1 1 0	1 1 0
His clerk - -	0 2 6	0 2 6	0 2 6
Attending him - - -	0 0 0	0 1 8	0 3 4
Paid chamber fees thereon - -	0 7 6	0 7 6	0 7 6
Attending conſultation - -	0 0 0	0 6 8	0 13 4
To Mr. *Erſkine* with his brief -	2 2 0	2 2 0	2 2 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him thereon - -	0 0 0	0 1 8	0 3 4
The like to Mr. *Partington* - -	1 1 0	1 1 0	1 1 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him - -	0 0 0	0 1 8	0 3 4
Attending court, cauſe in the paper, three days - - -	0 0 0	0 10 0	1 0 0
Attending again when cauſe tried, and verdict given in favour of the plaintiff - - -	0 0 0	0 6 8	0 13 4
Paid court fees - - -	3 3 6	3 3 6	3 3 6
Coffee-houſe expences for witneſſes	0 4 6	0 4 6	0 4 6
Term fee - - -	0 0 0	0 2 6	0 5 0
Letters and porters - -	0 0 0	0 2 0	0 4 0

Trinity Term, 1787.

Rule for judgment - -	0 1 10	0 2 2	0 2 6
Attending to get record ſtamped -	0 0 0	0 1 8	0 3 4
Paid - - -	0 5 0	0 5 0	0 5 0
Drawing and engroſſing *poſtea* -	0 0 0	0 1 8	0 3 4
Paid marking ſame - - -	0 0 6	0 0 6	0 0 6
Notice of taxing coſts, copy and ſervice	0 0 6	0 1 0	0 2 0
Drawing bill, and copy to tax - -	0 0 0	0 2 0	0 4 0

Attending

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Attending taxation	0	0	0	0	1	8	0	3	4
Drawing and entring up final judgment	0	0	0	0	2	6	0	5	0
Attending at *Westminster* thereon	0	0	0	0	1	8	0	3	4
Term fee	0	0	0	0	2	6	0	5	0
Letters, &c.	0	0	0	0	2	0	0	4	0

In the Sheriff's Court.

Chapman v. *Yates.*

Instructions and warrant to sue	0	2	7	0	2	7	0	4	4
Attending sheriff's office, to give instructions to reply	0	0	0	0	1	8	0	3	4
Paid sheriff for replevin bond, &c.	2	2	0	2	2	0	2	2	0
Paid his officers	1	1	0	1	1	0	1	1	0
Attending when bond executed	0	0	0	0	3	4	0	6	8
Entring plaint	0	0	0	0	1	8	0	3	4
Letters, &c.	0	0	0	0	2	0	0	4	0

In the *Common Pleas.*

Michaelmas Term, 1786.

Searching for *rec. fac. loq.*	0	0	0	0	1	8	0	3	4
Instructions for declaration	0	0	0	0	1	8	0	3	4
Drawing declaration, fol. 4.	0	0	0	0	2	0	0	4	0
Engrossing same, duty, and warrant	0	0	3	0	1	1	0	1	11
Entry on the roll	0	0	0	0	0	8	0	1	4
Paid prothonotary	0	2	0	0	2	0	0	2	0
Rule to avow	0	1	10	0	2	2	0	2	6
Searching for and demanding avowry	0	0	0	0	2	8	0	5	4
Attending summons for time to avow	0	0	0	0	1	8	0	3	4
Copying order	0	0	0	0	0	6	0	1	0
Attending second summons and copying order	0	0	0	0	2	2	0	4	4
Term fee	0	0	0	0	2	6	0	5	0
Porters, &c.	0	0	0	0	2	0	0	4	0

Hilary Term, 1787.

Copying avowry, fol. 8.	0	0	0	0	1	4	0	2	8
Searching whether rule to plead in bar given	0	0	0	0	1	8	0	3	4

	Monies out of pocket. £.	s.	d.	Agent. £.	s.	d.	Attorney. £.	s.	d.
Inſtructions to counſel, on motion to plead ſeveral matters	0	0	0	0	1	3	0	2	6
Fee to him therewith	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Paid for rule	0	14	0	0	14	0	0	14	0
Copy and ſervice	0	0	0	0	2	0	0	4	0
Affidavit of ſervice, duty, and oath in court	0	3	1	0	4	7	0	6	1
Inſtructions to counſel, on motion, to make rule abſolute	0	0	0	0	1	3	0	2	6
To his fee	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Paid for rule abſolute	0	14	0	0	14	0	0	14	0
Copy and ſervice	0	0	0	0	2	0	0	4	0
Summons for time to plead in bar, copy and ſervice	0	2	0	0	3	0	0	4	0
Order, copy and ſervice	0	2	0	0	3	0	0	4	0
Drawing plea in bar to avowry, fol. 18.	0	7	6	0	9	0	0	18	0
Paid ſpecial pleader to peruſe and ſettle	0	7	6	0	7	6	0	7	6
Attending him	0	0	0	0	1	8	0	3	4
Engroſſing plea to deliver and duty	0	0	6	0	3	6	0	6	6
Term fee	0	0	0	0	2	6	0	5	0
Letters, *&c.*	0	0	0	0	2	0	0	4	0
Eaſter Term, 1787.									
Rule to reply	0	1	10	0	2	2	0	2	6
Searching for, and demanding replication	0	0	0	0	2	8	0	5	4
Drawing interlocutory judgment, and award of inquiry, fol. 4. and entring proceedings, in all fol. 34.	0	0	0	0	7	0	0	14	0
To ſpecial pleader, peruſing and ſettling judgment	0	3	6	0	3	6	0	3	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Engroſſing proceedings on paper and duty	0	0	3	0	5	11	0	11	7
Entring ſame on the roll	0	0	0	0	5	8	0	11	4
Warrants and docket	0	1	4	0	2	0	0	2	8
Paid prothonotary	0	14	0	0	14	0	0	14	0

Paid

	Monies out of pocket. £. s. d.	Agent. £. s. d.	Attorney. £. s. d.
Paid clerk of the judgments -	0 2 0	0 2 0	0 2 0
Notice of executing writ of inquiry, copy and ſervice - - - -	0 0 0	0 1 6	0 3 0

N. B. The reſt of the charges as uſual, upon the execution of a writ of enquiry.

The coſts of ejectment in the Courts of *Common Pleas*, ſame as in the Court of *King's Bench*; except only, that you pay 12*s.* 8*d.* for ſigning judgment.

Bill of Coſts for the DEFENDANT *in Replevin.*

Attending at *Turnham Green*, and making a diſtreſs on the houſehold furniture of *Francis George*, taking inventory thereof, and drawing notice of diſtreſs - - -	0	0	0	0	10	6	1	1	0
Two fair copies of inventory, one to ſerve, and the other for uſe -	0	0	0	0	5	0	0	10	0
Searching ſheriff's office, whether tenant has brought a replevin, when found he had - -	0	0	0	0	1	8	0	3	4
Paid man in poſſeſſion four days, at 3*s.* and 6*d.* per day - -	0	14	0	0	14	0	0	14	0

Michaelmas Vacation, 1786.

Taylor v. *Haynes.*

Retainer and warrant to defend -	0	0	7	0	2	2	0	4	4
Entring appearance in the county court	0	2	0	0	3	8	0	5	4
Searching for bail - -	0	0	0	0	1	8	0	3	4
Inquiring after bail - -	0	0	0	0	3	4	0	6	8
Porters - - - - -	0	0	0	0	0	6	0	1	0

Common Pleas.

Hilary Term, 1787.

Inſtructions and warrant to remove plaint into this court - -	0	2	0	0	2	7	0	4	4
Præcipe for *re. fa. lo.* to remove ſame, and copy - - -	0	0	0	0	1	3	0	2	6

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Paid cursitor for same	0	5	0	0	5	0	0	5	0
Fee thereon	0	0	0	0	3	4	0	6	8
Attending sheriff therewith, and afterwards for return thereof	0	0	0	0	1	8	0	3	4
Paid sheriff for return, *&c.*	0	14	6	0	14	6	0	14	6
Returning and filing *re. fa. lo.*	0	2	0	0	2	0	0	3	0
Entring appearance	0	2	6	0	4	2	0	5	10
Rule to declare	0	1	10	0	2	2	0	2	6
Porters	0	0	0	0	1	0	0	2	0
Easter Term, 1787.									
Searching for and demanding declaration	0	0	0	0	2	8	0	5	4
Drawing and engrossing judgment of *non pros*	0	0	0	0	1	6	0	3	0
Duty for same	0	5	1	0	5	1	0	5	1
Entring proceedings on the roll	0	0	0	0	1	0	0	2	0
Paid signing judgment	0	5	4	0	5	4	0	5	4
Attending for that purpose	0	0	0	0	1	8	0	3	4
Writ of *ret. hab.* and fee	0	4	6	0	5	10	0	11	2
Attending sheriff to get writ returned	0	0	0	0	1	8	0	3	4
Paid for return	0	2	4	0	2	4	0	2	4
Paid filing same and attending	0	1	0	0	2	8	0	4	4
Term fee	0	0	0	0	2	6	0	5	0
Messengers and letters	0	0	0	0	2	0	0	4	0

The statute of 2 *Geo.* 2. *c.* 19. gives the defendant in *replevin*, after having obtained *Non Pros*, double costs, for which he may proceed upon the replevin bond.

Common Pleas.

Easter Term, 1787.

Instructions and warrant to proceed	0	2	7	0	2	7	0	2	7
Attending sheriff for leave for that purpose, and signing indemnity	0	0	0	0	1	8	0	3	4
Paid sheriff	0	6	8	0	6	8	0	6	8
Copying of replevy bond	0	0	0	0	1	6	0	3	0
Capias	0	5	4	0	8	8	0	12	0

The rest of the articles of charges as usual.

CHAPTER THE NINTH.

The Law of Ejectment.

1. AN EJECTMENT is a mixed action, by which a leſſee for years, when ouſted, may recover his term and damages; it is *real* in reſpect of the lands, but *perſonal* in reſpect of the damages. Since the diſuſe of real action, this mixed proceeding is become the common method of trying *the title* to lands or tenements. In this chapter, therefore, the following points are meant to be inveſtigated: See Mr. Serjeant Runnington's Treatiſe on Ejectment, p. 1. 5 Co. 105. Comb. 250. 9 Co. 97. 2 Burr. 667. 10 Mod. 177.

1. *The methods of proceeding.*
2. *For whom and in what caſes it lies.*
3. *For what things it lies.*
4. *Ejectment for non-payment of rent.*
5. *The declaration, demiſe, &c.*
6. *Service of declaration, &c.*
7. *Defence and plea.*
8. *Evidence and verdict.*
9. *Judgment and coſts.*
10. *Writ of error and execution.*
11. *Action for meſne profits.*
12. *Of a ſecond ejectment.*
13. *Practice and precedents.*

I. *The Methods of proceeding in Ejectment.*

1. THE ANCIENT way of proceeding in ejectment, was by actually ſealing a leaſe, on the premiſſes, by the party in intereſt who was to try the title: And this method is ſtill in uſe, in the following caſes:

2. FIRST. Where the houſes, or things for which the ejectment is brought, is empty: But a very little matter is ſufficient to keep poſſeſſion; and, therefore, where a tenant had left ſome beer in the cellar, and the landlord proceeded as on a *vacant poſſeſſion*, the judgment was ſet aſide. Strange. 1069. Vide ante page 96. pl. 1.

3. SECONDLY. When *a corporation* is leſſor of the plaintiff, they muſt give a letter of attorney to ſome perſon to enter and ſeal a leaſe on the land; for a corporation cannot make an attorney or a bailiff except by deed, nor can they appear but by making a proper perſon their attorney by deed; therefore, they cannot enter and demiſe upon the land, as natural perſons can. Carth. 390. Ld. Ray. 135.

4. THIRDLY. When the ſeveral intereſts of the leſſor of the plaintiff are not known, for, in that caſe, it is proper to ſeal a leaſe upon the premiſſes; leſt they ſhould fail in ſetting out in their declaration the ſeveral intereſt which each man paſſes.

1 Keble 690. 795. 5. FOURTHLY. When the proceedings are in an inferior court, they muſt proceed by actually ſealing a leaſe, becauſe they cannot make rules to confeſs leaſe, entry, and ouſter, in as much as inferior courts have not authority to impriſon for diſobedience to their rules.

2 Crompton's Practice 152. publiſhed by T. Whieldon, Fleet Street, in the year 1787. 6. THE MODERN METHOD of proceeding in *ejectment*, intirely depends on a ſtring of legal fictions; no actual *leaſe* is made; no actual *entry* by the plaintiff; no actual *ouſter* by the defendant; but all are merely ideal for the ſole purpoſe of trying the *title*. To this end, a leaſe for a term of years is ſtated, in the proceedings, to have been made by him who claims title, to the *plaintiff* who is generally an ideal fictitious perſon, who has no exiſtence; though it ought to be a real perſon to anſwer for the defendant's coſts. In this proceeding, which is THE DECLARATION; for there is no other proceſs in this action, it is alſo ſtated, that *the leſſee*, in conſequence of the demiſe to him made, entered into the premiſſes; and that *the defendant*, who is alſo now another ideal fictitious perſon, and who is called *the caſual ejector*, afterwards entered thereon, and ouſted the plaintiff; for which ouſter, the plaintiff brings this action. Under this declaration is written *a notice*, ſuppoſed to be written by this caſual ejector, directed to *the tenant in poſſeſſion* of the premiſſes; in which notice, the caſual ejector informs the tenant of the action brought by *the leſſee*, and aſſures him, that as he, the caſual ejector, has no title at all to the premiſſes, he ſhall make no defence; and, therefore *he* adviſes *the tenant* to appear in court, at a certain time, and defend his own title, otherwiſe *he*, the caſual ejector, will ſuffer judgment to be had againſt *him*, by which the *actual tenant* will inevitably be turned out of poſſeſſion.

7. The declaration, with *the notice* ſubjoined, is then *ſerved* on the tenant in poſſeſſion, and it muſt be read and explained to the party ſerved at the time of the ſervice; and, by the common law, the declaration, againſt the caſual ejector, muſt have been ſerved either on the tenant himſelf or on his wife, and could not have been ſerved on any of his children or ſervants. But this is now remedied by

4 *Geo.*

4 *Geo.* 2. *c.* 28. "In all cases between LANDLORD and TENANT, "when half a year's rent is in arrear, for which no sufficient distress can be found on the premisses," as will be "shewn hereafter.

Vide ante page 96. pl. 1.

8. By this friendly caution, the *tenant* in possession has then an opportunity of defending his title, which, if he omit to do in a limited time, he is supposed to have no right at all; and, upon judgment being had against *the casual ejector*, the *real tenant* will be turned out of possession by the sheriff. But if the tenant apply to be made defendant, it is allowed him upon this condition, that he enter into *a rule of court*, to confess, at the trial of the cause, *three* of the *four* requisites for the maintenance of the plaintiff's action, *viz.* the *lease* of the lessor, the *entry* of the plaintiff, and the *ouster* by the *tenant* himself, who is now made *defendant*, instead of the *casual ejector*; which requisites, as they are wholly fictitious, should the defendant put the plaintiff to prove, he must, of course, be *non-suited* at the trial for want of evidence; but by such stipulated confession of *lease*, *entry*, and *ouster*, the trial will stand upon the merits of the *title* only. This rule being entered into, THE DECLARATION is now altered by inserting the name of *the tenant*, instead of the fictitious name of *the casual ejector*; and the cause goes to trial under the name of *the fictitious lessee*, on the demise of the lessor; the *person claiming title* AGAINST the now defendant.

9. THE LESSOR is bound to make out, on the trial, his *title* to the premisses, otherwise his *nominal lessee* cannot obtain judgment to have possession of the land for the term supposed to be granted; but if he make out his title in a satisfactory manner, the judgment is given for the *nominal plaintiff*, and a writ of possession goes in his name to the sheriff to deliver possession.

10. But if the defendant fail to appear at the trial, and to confess *lease*, *entry*, and *ouster*, the nominal plaintiff must indeed then be non-suited for want of proving these requisites; but judgment will nevertheless, in the end, be entered for him against the casual ejector; for the condition, on which the tenant was admitted, is broken, and therefore the plaintiff is put again in the same situation, as if he had never appeared at all; the consequence of which would have been, as we have already mentioned, that judgment must pass for *the plaintiff*, and *the tenant* would have been turned out of possession. The same process, therefore,

therefore, as would have been had, provided no conditional rule had been made, muſt now be purſued as ſoon as the condition is broken; but execution will be ſtayed, if any landlord, after default of the tenant, applies to be made a defendant, and enters into the uſual rule to confeſs *leaſe, entry*, and *ouſter:* And theſe matters of ejectment are immediately under the controul of the court, who, on application, will model them to anſwer every purpoſe of juſtice and convenience.

3 Burr. 1304.

II. *For whom and in what Caſes Ejectment lies.*

3 Black. Com. 206. Run. Eject. 9.

1. It is a general rule, that no perſon can, in any caſe, bring AN EJECTMENT, unleſs he have in himſelf, at the time, *a right of entry*; for although, by the modern practice, the defendant is obliged, by rule of court, to confeſs leaſe, entry, and ouſter; yet that rule was only deſigned to expedite the trial of the plaintiff's right, and not to give him a right which he had not before; and, therefore, when it happens that the perſon claiming title to the lands has no *right of entry*, he cannot maintain this action.

Elliot v. Danby, 2 Eſpinaſſe's Digeſt 132.

2. Thus where the aſſignee of a bankrupt, brought an ejectment for part of the bankrupt's eſtate, before *the aſſignment* to him by the commiſſioners was *enrolled*, he was nonſuited; for a bankrupt's eſtate muſt be ſold by deed indented and enrolled, (*a*) and ſuch bargain and ſale muſt be enrolled within ſix months, (*b*) ſo that before the enrolling, the aſſignees have no legal title.

(*a*) By the 13 Eliz. c. 7. 21 Jac. 1. c. 19. (*b*) By 27 Hen. 8. c. 16.

Sir T. Jones 196.

3. But, in the caſe of a common *bargain and ſale*, the eſtate paſſes by the *contract*, and is *executed* immediately by the operation of the ſtatute of uſes; and, therefore, under ſuch a conveyance, the *bargainee* may, before enrollment, maintain this action.

Littleton, Section 595.

4. If tenant in tail make a feoffment in fee, and thereby make a diſcontinuance, and die, the iſſues in tail cannot *enter*, and therefore cannot maintain this action. The caſe is the ſame with other diſcents which toll entries; but by the 32 *Hen.* 8. *c.* 33. "If a *diſſeiſor* die within five years "after *diſſeiſin* done, and the lands deſcend to his heir, ſuch "deſcent ſhall not take away the entry of the *diſſeiſee*, "though he has made no claim." But if there be five years quiet poſſeſſion in the diſſeiſor, continual claim is ſtill as neceſſary as it was before the ſtatute.

5. By

5. By the common law, if the husband seised in right of his wife, had enfeoffed another, and died, this was a discontinuance, and took away her *right of entry*, so that she could not maintain an ejectment. But now, by the 32 *Hen.* 8. *c.* 28. "No act of the husband only shall make "a discontinuance of, or prejudice, the inheritance, a free-"hold of the wife; but that after his death, she and her "heirs may enter on the lands in question."

6. EJECTMENT, being an action of *trespass* in its nature, and said to be done *vi et armis*, it follows that the *ouster* must be done to the person complaining, and not to another person who had the plaintiff's possession, though the plaintiff's title be affected by such ouster. For it were an impropriety to say that the defendant *vi et armis* ejected the plaintiff, when it appears that he had not the actual possession, but that it was, at the time of the ouster, in another. Run. Ejct. 9.

7. Therefore, if *A.* lessee for years, make a lease to *B.* at will, and *B.* is ejected, *A.* cannot have this action upon that *ouster*; because, though the possession of *B.* was in law, the constructive possession of *A.* yet the trespass *vi et armis*, which is complained of in this action, must be against the actual possession; and that was in *B.* But it seems, in this case, that *B.* though but *tenant at will*, may make a lease to punish the trespass and ejectment; otherwise there would be an injury done, and no one allowed to punish it. So if *A.* be lessee for years, remainder to *B.* for years, and *A.* is ejected, and then his term expires, *B.* shall not have an ejectment on the *ouster* of *A.*; because the possession was not *actually* in him, and he cannot complain of a *trespass* done to another. Roll. Rep. 3.

8. The plaintiff also, although he may, in fact, possess a good and lawful title, yet he may be *barred* of his right of entry, and so deprived of his power of recovering in this action; for, by the statute of limitation, 21 *Jac.* 1. *c.* 16. "No person shall make an entry into lands, &c. but with-"in *twenty years* after his right and title shall first accrue, "with the usual savings for infants, feme-coverts, persons "insane, &c."

9. Therefore, if the lessee of the plaintiff is not able to prove himself or his ancestors to have been in possession within twenty years before the action brought, he shall be non-suited. Bull. N. P. 102.

10. If a declaration in ejectment has been delivered within twenty years, and a trial had, whereby lease, entry,

and ouſter, has been confeſſed, if the plaintiff has been non-ſuited in that action, and brings another ejectment, *after the twenty years expired*, the former confeſſion of leaſe, entry, and ouſter, ſhall not be ſufficient to ſave the running of the ſtatute againſt the plaintiff; for there muſt be an actual entry within twenty years.

Rich on the demiſe of Lord Cullen v. Johnſton. 2 Strange 1142. Bul. N. P. 102. 2 Eſpinaſſe's Dig. 135.

11. The poſſeſſion of the leſſor of the plaintiff within twenty years which is neceſſary to give him a title muſt be an *actual* poſſeſſion, not a *preſumptive* or *implied* one: Therefore in an ejectment for *mines*, the leſſor of the plaintiff proved himſelf to be *lord of the manor*, and that he was in poſſeſſion of the *manor*, but no entry was proved to have been made on the *mines* within twenty years, and it was held inſufficient; for the mines are a diſtinct poſſeſſion and may be a different inheritance from the manor.

Salk. 421. 1 Ld. Raym. 741. 1 Burr. 119. Burr. Settlement Caſes 451. 11 Mod.

12. The proof of poſſeſſion within twenty years is not only neceſſary to ſupport the title of the leſſor of the plaintiff; but ſuch a poſſeſſion is a poſitive title to the defendant; for it is like a deſcent which tolls an entry and gives *a right of poſſeſſion* which is ſufficient in ejectment to bar the plaintiff from his action; but the twenty years poſſeſſion which is ſufficient to bar an ejectment or to give a title muſt be *an adverſe poſſeſſion*, for where it appears not to be adverſe the ſtatute of limitations does not run: therefore where a man made a mortgage as a collateral ſecurity, though the *mortgagor* had continued in poſſeſſion for above twenty years yet the intereſt having been paid for that time, it was held that the *mortgagee* was not barred in bringing his ejectment; for there was no *adverſe poſſeſſion*, their titles being the ſame.

6 Mod. 44. Salk. 205. 5 Burr. 2635. Co. Lit. 195. Hob. 120. Co. Lit. 242.

13. The poſſeſſion of one *joint tenant* is the poſſeſſion of the other, ſo as to prevent the ſtatute from being a bar in ejectment; for each joint tenant hath a right to the whole, and therefore the entry and poſſeſſion of one is as good as that of both: and ſo it is of *coparceners*, or *tenants in common*; for, in general where two perſons claim by the ſame title or where one party claims *under* or *through* the other, there ſhall be no *adverſe poſſeſſion* ſo as to toll an entry of the one, or prevent the entry of the other from being at all times lawful; but what ſhall be deemed an *adverſe poſſeſſion* is a fact proper to be left to the jury; and therefore where one *tenant in common* had *thirty-ſix* years ſole uninterrupted poſſeſſion without any account to, or demand made, or claim ſet up by his *companion* the Court held theſe

Doe on the demiſe of Fiſher v. Proſſer, Mich. Term 15 Geo. 3. Cowp. 207.

circumſtances

circumſtances a ſufficient ground for a jury to preſume an *actual ouſter* of the co-tenant; but in general where an adverſe poſſeſſion is relied on, the Court expects there ſhould be proof of an *actual* ouſter, for unleſs they are very ſtrong, preſumption from circumſtances will not be ſufficient.

1 Roll. Abr. 659. Bul. N. P. 104. 2 Eſpinaſſe's Dig. 139.

14. The ſtatute of limitation does not affect the intereſts of THE KING, and this privilege is derived to his leſſee; as where *A.* has a leaſe for ninety-nine years from the Crown, and is out of poſſeſſion for more than twenty years, yet he may recover in ejectment; for *A.* hath the king's poſſeſſion, and the king is privileged from *non-claim* according to the maxim, *quod nullum tempus occurrit regi.* But now by 9 *Geo.* 3. *c.* 16. a time of limitation is extended to the caſe of the king, who is thereby diſabled to make title, except to liberties and franchiſes, beyond the ſpace of *ſixty years* to be reckoned backwards from the time of commencing any ſuit or proceeding to recover the thing in queſtion; ſo that now a poſſeſſion for ſixty years will even be a bar to the king's prerogative.

2 Leon. 206. Cro. Eliz. 331. Run. Eject. 15.

15. But if the Crown grant the reverſion, the privilege doth not follow it in the hands of the grantee, nor is a common perſon affected by the ſtatute of limitations where the poſſeſſion is in the hands of his tenant who has paid him rent within the time of limitation; for the poſſeſſion of a leſſee for years is the poſſeſſion of his leſſor, and payment of rent is an acknowledgement of ſuch poſſeſſion: So, that during the continuance of the leaſe and payment of rent the leſſee is in no ſort of default, for he cannot *enter* and take the actual poſſeſſion till the leaſe be expired; but then, it ſeems that he ſhould, becauſe his *right of entry* firſt accrues.

16. A MORTGAGEE may maintain an action of ejectment either to obtain poſſeſſion of the mortgaged premiſes or eſtate; or to get into the receipt of the rents and profits only: But ſince the determination (*a*) that *a mortgagee* after giving notice to the tenant in poſſeſſion under a leaſe prior to the mortgage, may *diſtrain* as well for the rent in arrear at the time of the notice as for what accrues afterwards; the common practice has been (*b*) for a mortgagee, when he only means to get into the receipt of the rents to keep down the intereſt, to give notice to the tenant of his mortgage and to pay the rents to him; inſtead of reſorting TO AN EJECTMENT.

2 Eſp. 140. Run. Eject. 22.

(*a*) Moſs v. Gallimore, 20 Geo. 3. Dougl. 279.

(*b*) Cromp. Pract. 197.

17. A

Keech v. Hall. Dougl. 21.

17. A mortgagee may recover in ejectment, *without giving* NOTICE TO QUIT, againſt a tenant who claims under a leaſe from the *mortgagor* granted after the mortgage without privity of the *mortgagee*; but where lands are let for years and afterwards mortgaged, the mortgagee ſhall not be ſuffered to turn the tenant out of poſſeſſion by the execution, although the leaſe with reſpect to the laſt year of the term, might be conſidered as a leaſe ſubſequent to the mortgage; and therefore to proceed in ejectment under this circumſtance the mortgagee muſt give notice to the tenant, before the action, that he does not mean to diſturb *his poſſeſſion*, but only requires the rent to be paid to him and not to the *mortgagor*. On a mortgage for years being made to *A.* who, without the mortgagor joining, aſſigned the mortgaged premiſſes to *B.* who aſſigns them to *C*; this ſecond aſſignee may maintain an ejectment againſt the mortgagor; for by executing the mortgage deed the mortgagor becomes *tenant at will* to *A.*; and as by the aſſignment of the mortgage he only becomes a *tenant at ſufferance*, his continuing in poſſeſſion under the covenant that he ſhall hold and enjoy the premiſſes till default of payment, can never create a *diſſeiſin* or diveſting of the term, and ſo an ejectment may well be maintained.

White on the demiſe of Whatley v. Hawkins. Mich. 14 Geo. 3. Bul. N. P. 96.

2 Eſp. Dig. 140.

Smartle v. Williams. Salk. 245.

18. By 7 *Geo.* 2. *c.* 20. "Where any action ſhall be brought "on any *bond* for payment of money ſecured by mortgage "or performance of the covenants therein contained; or "when any action of ejectment ſhall be brought by any "*mortgagee*, *&c.* his heirs, executors, adminiſtrators, or "aſſigns for the recovery of the poſſeſſion of any mort"gaged lands, *&c.* and no ſuit ſhall be depending in "equity for or touching the foreclоſing or redeeming of "ſuch mortgaged premiſſes, if the perſon who has a right "to redeem ſhall appear and pay to the mortgagee or "bring into Court (*a*) the principal, intereſt and coſts, to "be computed by the proper officer, he ſhall be diſcharged "from the mortgage; and the Court ſhall, by rule, com"pel the *mortgagee* at the coſts and charges of the "*mortgagor* to pay the coſts and charges, to re-con"vey the premiſſes, and to deliver up all deeds re"lating to the title of the ſame: AND on bills of fore"cloſure in equity for the payment of the money or in "default thereof for the recovery of the premiſſes, ſuch "court of equity, upon application of the defendant "having a right to redeem, and upon admiſſion of the "plaintiff's

(*a*) Strange 413.

" plaintiff's right, may, before hearing make order therein " as if the cauſe had been brought to a hearing. But this " act ſhall not extend to caſes where the right of redemp- " tion is controverted, or the money due not adjuſted; nor " to prejudice any ſubſequent mortgage."

19. The mortgagee cannot include bonds, though they are a lien on the eſtate, nor can the aſſignee of a mortgagee include the payment of a bond and a ſimple contract due to him in his own right, in the principal, intereſt and coſts; nor will the court direct the prothonotary in computing them to take notice of any particular expenditures for neceſſary repairs made by the mortgagee, but— Barnes 176, 177. 182.

20 A ſecond mortgagee who takes the aſſignment of a term to attend the inheritance and has all the title deeds may recover in ejectment againſt the firſt mortgagee, not having had notice of ſuch prior mortgage. Norris v. Magain, 1 Term Rep. 755.

21. Where there are two or more mortgages, the Court will not ſtay proceedings and compel a redemption of one mortgage only, upon payment of the principal, intereſts and coſts on that mortgage without paying the reſt. Doe on demiſe of Kaye v. Soley. 2 Black. Rep. 726.

22. If a ſubſequent purchaſer or mortgagee has notice of a former purchaſe or incumbrance he ſhall not avail himſelf of an aſſignment of an old outſtanding term prior to both, in order to get a preference; but if he had no notice of ſuch prior incumbrance or purchaſe, and has the firſt and beſt right to call for the legal eſtate, then if he gets an aſſignment of it, a court of equity will not deprive him of his advantage. Willoughby v. Willoughby. 1 Term Rep. 736.

23. If a ſecond mortgagee lend his money upon an eſtate upon which there is an old outſtanding term and has notice at the ſame time of a certain incumbrance prior to his own, the prior incumbrancer has the beſt right to call for the *legal eſtate*, and to ſatisfy himſelf of any other incumbrances upon the eſtate, although ſuch other incumbrances were not known to the ſecond mortgagee at the time he advanced his money. 1 Term Rep. 763.

24. The DEVISEE OF A TERM OF YEARS may maintain *ejectment* to recover the term demiſed, but it is neceſſary to ſhew the aſſent of the executors to the deviſe. In the caſe of the deviſe of a *freehold*, the deviſee may immediately, and without any poſſeſſion, maintain an EJECTMENT for the lands deviſed; for after the teſtator's deceaſe the law caſts the freehold on the deviſee, and even ſhould the heir Young v. Holmes. 1 Strange 70.

Co. Lit. 240. 2 Esp. Dig. 142.

heir enter and die seised and a discent be cast, yet the devisee may enter and so maintain an ejectment; for otherwise he would be without remedy.

Run. Ejct. 10. Co. Lit. 42.

25. The CONUSEE of a *statute merchant* or *statute staple* may maintain an ejectment; for these tenants have but a chattel interest and that for a period of uncertain duration, *viz.* till their debts are satisfied, yet this being a permanent interest the law has provided the means of securing it by this action.

Dougl. 456. Bul. N. P. 104. Ld. Ray. 718. Salk. 563.

26. TENANT BY ELEGIT may maintain this action to be put into possession under the elegit; but he should prove the *judgment*, the *elegit* taken out upon it, and the *inquisition* and *return* thereon by which the lands in question have been assigned to him; and it should appear that the *elegit* had been lawfully executed; for if more than *a moiety* has been extended the execution is void and AN EJECTMENT cannot be maintained on it, nor the possession recovered on this title: But in executing an *elegit* the sheriff is not bound to deliver *a moiety* of each particular tenement and farm, but *a valued moiety* of the whole; for, as he is to deliver possession by *metes and bonds*, by such means only can a complete execution be made.

Run. Ejct. 11. 1 Vent. 30. 7 Hen. 4. pl. 6.

27. AN EXECUTOR may have this action for an ejectment done to the *testator*; for although at the *common law* it was held, that personal wrongs died with the person yet when *the statute* 4 *Edw.* 3. *c.* 6. gave the action for goods taken out of the possession of the testator, it seemed but an equitable construction of that act to extend the remedy to terms for years, and to punish the trespass on that sort of property; especially as leases for years were looked upon as goods and chattels, it was the more reasonable to bring them all under the same regulation: and if the executors of a lessee for years are themselves ousted from the demised premisses they may either have a special writ on the case or maintain an ejectment.

4 Co. 95. F. N. B. 92. Regist. 97.

Per Ld. Hardwick, 2 Atk. 286.

28. AN ADMINISTRATOR on letters of administration being granted *pendente lite* may maintain an action of ejectment.

Shae v. Porter. 3 Term Rep. 13.

29. In case of a tenancy *from year to year* as long as both parties please, if the tenant die intestate his *administrator* has the same interest in the land which his intestate had; and the lessee of such an administrator may declare in an ejectment on a term for *seven years*, for the time is not conclusive.

30. A

30. A CORPORATION AGGREGATE may bring ejectment; but, to make themſelves leſſors of the plaintiff, they muſt give a letter of attorney to ſome perſon to enter and ſeal a leaſe upon the land; for a corporation cannot make an *attorney* or *bailiff* except by deed; nor can they appear but by making a proper perſon their attorney by deed; therefore they cannot enter and demiſe upon the land in perſon, as natural perſons can; nor can they ſubſtitute an attorney to enter into a rule for their coſts; nor will an attachment go againſt them for diſobedience to that rule; hence they are obliged to make an actual leaſe upon the land, which leaſe muſt try their title, and then the attorney may proceed in the common method which is not altered by ſtatute: But a declaration in ejectment by a corporation has been held good after verdict, without ſetting out that the *demiſe* was by *deed* or under the ſeal of the corporation. Bul. N. P. 98. Vide ante page 135. pl. 3. Patrick v. Balls, 1 Ld. Raym. 136.

31. A CORPORATION SOLE may bring an ejectment: Thus where the copyholders of a manor belonging to a biſhoprick during the vacancy of the ſee, committed a forfeiture by cutting timber, the ſucceeding BISHOP was allowed to maintain an ejectment. Bul. N. P. 108.

32. A COPYHOLDER if he is ouſted by his lord may maintain an ejectment againſt him; for though he is called a *tenant at will* yet it is according to the *cuſtom of the manor*, and the copyholder cannot be put out while he performs his ſervices; but in ſuch caſe it ſeems to be neceſſary that the copyholder ſhould be warranted to make leaſes either by the cuſtom of the manor or by licence of the lord, and then he may clearly have this action; and even without a cuſtom to make leaſes the copyholder may clearly maintain this action againſt all perſons except the lord. So, alſo, if the *leſſee* of a copyholder be ejected by a ſtranger he may have this action; and ſo alſo, *the lord* ſhall in this action to recover the copyhold where the copyholder has committed a forfeiture.—*Sed qu.* If the ſurrenderee before admittance can recover againſt the lord or a ſtranger. (*a*) Lit. Sect. 77. 1 Leon 4. Cro. Eliz. 535. 676. Co. Copy. 51. 4 Co. 26. (*a*) Holdfaſt on the demiſe of Woollams v. Clapham. 1 Term Rep. 600.

33. AN ATTORNEY cannot be a leſſor in ejectment. Dougl. 466.

34. TRUSTEES ſhall not recover poſſeſſion from a diſputed *title* with their *ceſtui que truſt*; nor where it is clear that the perſon in whom the *legal eſtate* is veſted, is a mere truſtee, he ſhall not avail himſelf of his title to defeat his *ceſtui que truſt* from recovering in ejectment. 3 Burr. 1901. Dougl. 721. 777. Cowp. 46.

Doe on the demiſe of Warry v. Miller. 1 Term Rep. 393.

35. A ſurrender of chambers in the *New Inn* to the treaſurer and ancients of the Society, made with their aſſent, to the intent that they may grant the ſaid chambers to a purchaſer, paſſes the eſtate to ſuch purchaſer before admiſſion: And therefore upon the death of the ſurrenderee before admiſſion THE SOCIETY may maintain ejectment for them.

Holdfaſt on the demiſe of Williams v. Clapham. 1 Term Rep. 600.

36. The title to copyhold lands relates back from the time of the admittance to the ſurrender as againſt all perſons but the lord; ſo that THE SURRENDEREE may recover in ejectment againſt the ſurrenderor, on a demiſe laid between the times of admittance and ſurrender.

Ibid.

37. The ſurrenderor of a copyhold eſtate is conſidered before admittance as a *truſtee* for the ſurrenderee, and therefore is not permitted to ſet up a *formal objection* againſt the plaintiff recovering in EJECTMENT that property which he holds for the benefit of the ſurrenderee.

Eſtwick v. Way, 1 Term Rep. 735.

38. THE TRUSTEE of a term not having notice of an agreement for a leaſe before the grant of the term, may maintain an ejectment againſt the tenant in poſſeſſion under the agreement.

Doe v. Barber, 2 Term Rep. 749.

39. A leaſe of a rectory by a rector becomes void by 13 *Eliz. c.* 20. by his non-reſidence for eighty days, of which a ſtranger may take advantage; and his *leſſee* cannot maintain an ejectment againſt a ſtranger who enters without any title whatever.

Baker v. White 2 Term Rep. 159.

40. Where *an infant* becomes entitled to the reverſion of an eſtate leaſed from year to year, he cannot eject the tenant without giving the ſame notice as the original leſſor muſt have given.

Roe on the demiſe of Eberel and Others v. Lowe and Others. 1 Term Rep. in the Com. Pleas, p. 447.

41. *A.* deviſes copyhold lands to "TRUSTEES in fee," (who are to be from time to time renewed) "in truſt that "the rents and profits ſhall for ever afterwards be diſpoſed "of to certain *charitable purpoſes*; and directs that the "rent of the ſaid copyhold lands being eleven pounds "*per annum*, ſhall never be improved or raiſed, but ſhall "continue at eleven pounds *per annum*; and that *B.* who "was the tenant of the ſaid copyhold lands, and his chil-"dren and poſterity which ſhould ſucceed ſhall never be "put forth or from the ſame, but always continue the poſ-"ſeſſion paying the eleven pounds."—Neither *B.* nor his deſcendants were ever admitted on the court rolls. If *B.* took any eſtate it was an equitable *eſtate tail*; but the intereſt of *B.* (whatever it is) will not prevent THE TRUSTEES recovering

recovering in *ejectment* though the rent has been regularly paid.

III. *Of what Things Ejectment will lie.*

1. Originally *damages* only were recoverable in ejectment, and not the poſſeſſion of the thing itſelf; but as terms for years began to ſwell to a great length, and were by ſuch means put out of the power of *the freeholder*, it became reaſonable and neceſſary to give the writ of *habere facias poſſeſſionem*, in order to recover poſſeſſion of the land itſelf. When *the poſſeſſion* therefore was given in this action it became neceſſary to confine it to ſuch things as the ſheriff might have recourſe to after judgment to deliver the poſſeſſion of; but the courts did not confine it to the rules in THE REGISTER which govern the *præcipe*, but allowed it to be brought for ſome things which could not be demanded in a *præcipe quod reddat*; thus, it hath been held that an ejectment lies of *an orchard*; becauſe it is a word of certain ſignification, though in a *præcipe* it muſt be demanded by the name of *a garden*; and it being well enough underſtood the ſheriff may with certainty deliver it upon an execution: So an ejectment has been allowed for *a ſtable* and *a cottage*, becauſe they are words of a determined ſignification and may be delivered by the writ of execution: an ejectment of an *houſe* is good, though in a *præcipe* it ought to be demanded by the name of a *meſſuage*. So alſo, an ejectment of *a chamber* in the ſecond ſtory of ſuch a houſe was held good, there being certainty enough to direct the ſheriff in the execution, and in that caſe, it was ſaid, that an ejectment *de una rooma* had been adjudged good; it has even been held, that an ejectment for *part of a houſe in A.* is well enough: So alſo, it lies of a *manor*; ſo many acres of *land*; of *meadow*; of *paſture*; of *wood*; or of a certain place called *the veſtry* in *D*; of a *rectory* of a *chapel* which may be demanded by the name of *a meſſuage*, or for a *prebendal ſtall* after the collation to it. So alſo, it lies of a *cottage*, of a *ſtable*, of a *boilery of ſalt*, (*a*) of

Runnington's Ejectment, p. 25.

Cro. Eliz. 854. Cro. Jac. 465. Noy 57.

Cro. Eliz. 818. 1 Lev. 58. Style 215.

Cro. Jac. 654. Palm. 337.

Stra. 695. Cro. Eliz. 286.

11 Co. 55.

3 Leon. 210. Hard. 57.

(*a*) Upon this Caſe Mr. Serjeant RUNNINGTON makes this Obſervation, "As I underſtand this caſe, "it is, where there is *a well of ſalt* "*water*, and a man hath no inhe- "ritance in the ſoil of it, but only a "leaſe or grant of ſo many buckets "of the water as will ariſe which "are called *boileries*; now if any "one withhold the buckets of wa- "ter from the grantee he may "bring his action of ejectment; "and this differs from the caſe of "a *ſtream or running-water*; be- "cauſe there the thing demanded "is tranſient and always running; "but

1 Lev. 58. 3 Lev. 96. Cro. Eliz. 818. Cro. Jac. 655. Cro. Car. 555. 1 Sho. 364. Salk. 255. Strange 695. 1084. Andrews 106. 4 Mod. 98. Bul. N. P. 99. 4 Burr. 2672. 2 Cromp. Pract. 155. Impey's Inst. Cler. 473. Run. Eject. 32.

of a *coal mine*, (*a*) of *land and a coal mine* in the same land, of a *pool* or standing water, of a *stream* or running water, (*b*) of a *beast gate*; for so many acres of *herbage* for a *first mowing*, for a *hop yard*; of a *close* called *D.* containing so many acres: So for a *parcel of a highway*, and though it be built upon, it shall be demanded as land; so also it lies for so many acres of *furze* and *heath*, or *moor* and *marsh*; so also, in the county of NORFOLK it may be brought for an *alder car*; or in IRELAND for mountains or so many acres of *bogg*; because in these places the words have but one signification and comprehend respectively only one sort of land. An ejectment will lie for *tithes*, for although they are by the common law considered as part of the *incorporeal inheritance*, yet as by the statute 32 *Hen.* 8. *c.* 7. the same remedy is given to every *lay person* who having any estate or interest in tithes and is disseised thereof, as they have for lands, it is held that *lay impropriators* may bring an ejectment for tithes; and this doctrine has since been extended by analogy to tithes in the hands of the clergy; but it only lies against the person claiming or pretending to have title thereto, and not against those who only *subtract* them. So also it was formerly held that an ejectment did not lie for *a chapel* because it was *res sacra* which was not demisable; but now since they are become lay inheritances they are recoverable in ejectment as other lay estates, but it should be demanded by the name of *a messuage*, or it is not formal.

Cro. Car. 301. Ld. Raym. 789.

See 27 Hen. 8. c. 91. 32 Hen. 8. c. 7. 2 & 3 Edw. 6. c. 13.

Co. Lit. 9. a.

2. But for *a rent* or common *apprender*, as common in gross, *&c.* or other things that lie merely in grant, no ejectment lies; because these being incorporeal things are in their nature invisible, *que neque tangi nec videri possunt*; and therefore not in their nature capable of being delivered in execution, but for common *appendant* or *appurtenant* an ejectment will lie, because the sheriff may give the possession of such common, by giving possession of the land to which it belongs.—For this reason an ejectment of *a fishery* in such a river has been held ill: So, an ejectment

Strange 54.

Cro. Car. 492. Cro. Jac. 496. 8 Mod. 277.

" but here the water is fixed in a " certain place within the bounds " and compass of the weil, and is " considered as part of the soil; " and therefore Sir *Edw. Coke* says, " that by the grant of *a boilery of* " *salt*, the *soil itself* passes." Runnington on Eject. 37. Co. Lit. 4. b. Cro. Jac. 150. 1 Lev. 114. 1 Sid. 161.

(*a*) *Sed. qu.* If it ought not in this case to be brought for so many acres of *land covered with water*, Co. Lit. 5. Yelv. 143. 2 Bl. Com. 5. Yelv. 143.

(*b*) Cowp. 305.

for

for a certain *rivulet* or *water-course* called *D.* doth not lie, becauſe it is impoſſible to give execution of a thing which is tranſient and always renewing; an ejectment will not lie for *pannage* although it will for the *herbage* of land; becauſe *pannage* conſiſts only of the waſte which fall from the trees, which the ſwine feed on, and is not part of the ſoil itſelf, as the *herbage* is. It will not lie for *a croft*, nor of *a kitchen*, and an ejectment for a *meſſuage* or *tenement* without other deſcriptions is bad, or *demurrer* to the declaration, for its uncertainty, (*a*), but an ejectment for a *meſſuage* AND *tenement* is good after verdict. (*b*) An ejectment will not lie of *the fourth part* of a meadow, without ſhewing the number of acres the meadow contains: (*c*) And an ejectment for fines, cloſes of land, arable and paſture, called, Long furlongs, containing ten acres, has been held bad (*d*): So alſo *de mineris carbonum* not ſaying how many is bad, unleſs it be the cuſtom of the place to be ſo (*e*): So alſo an ejectment for one hundred acres of *waſte*, or for one hundred acres of *mountain*, is bad for uncertainty (*f*): So alſo for a *houſe*, ten acres of land, and twenty acres of meadow, by the name of *a houſe and ten* acres of meadow, is bad; for it ſhould be a *meſſuage* inſtead of a *houſe* (*g*): So alſo an ejectment for a *manor* muſt deſcribe the quantity and ſpecies of the land contained therein (*h*).

Yelv. 143. 1 Brownl. 142.

Hard. 330. 1 Lev. 213. 1 Sid. 416.

(*a*) Cro. Eliz. 3 Lev. 228. Cro. Jac. 125.

(*b*) Stewart v. Denton, 1 Term Rep. 11. See alſo 1 Burr. 623. 2 Bac. Abr. 169, and Leach's Edition Cro. Eliz. 186.

(*c*) 1 Lev. 213.

(*d*) Cro. Car. 573.

(*e*) Salk. 235.

(*f*) Palm. 100. Salk. 255.

(*g*) 6th Edit. of this Work. *Sed quere.*

(*h*) Latch. 61. Haley 146.

3. The *general maxim* in laying houſes and lands in ejectment is, that they muſt be ſpecified in ſuch a manner in the declaration that the ſheriff may certainly know what to give the poſſeſſion of, if the plaintiff ſhould recover; for the judgment is in order to execution, and the judgment would be vain if execution could not be had of the thing ſpecifically demanded, and yet at this day the practice is for the ſheriff to deliver poſſeſſion according to the direction of the plaintiff who therein acts at his peril.

5 Burr. 2673. 1 Burr. 144. 629. 631.

IV. *Of Ejectment for Non-payment of* RENT.

1. By the common law an *actual entry* by the perſon claiming title to lands and tenements, was neceſſary to be made in order to ſupport an action of ejectment, but in the caſe of a leaſe the landlord could not enter and take the actual poſſeſſion until the leaſe was expired; it therefore became uſual to inſert a proviſo that in caſe the rent of the demiſed premiſſes was behind and unpaid at a cer-

tain time, the leſſor ſhould have a right to *re-enter*. In parol demiſes however from year to year the landlord could not have the benefit of ſuch a proviſo; and when the right of *re-entry* ſubſiſted, great inconvenience frequently happened to leſſors and landlords in caſes of re-entry for non-payment of rent, by reaſon of the many niceties that attended ſuch re-entries at common law, and even when a legal re-entry was made, the landlord or leſſor was put to the expence, charge, and delay of recovering, in ejectment, before he could obtain the actual poſſeſſion of the demiſed premiſſes. It is therefore enacted,

In all caſes between landlord and tenant where there is half a year's rent in arrear, and the landlord hath a right to re-entry the landlord may without demand or entry ſerve a declaration in Ejectment and recover the demiſed premiſes diſcharged of the leaſe.

2. By 4 *Geo.* 2. *c.* 28. *ſ.* 2. "That, in *all caſes*, between "LANDLORD and TENANT, as often as it ſhall happen that "one half year's rent is in arrear, and the landlord or leſſor "to whom the ſame is due, hath right, by law, to re-enter "for non-payment thereof; ſuch landlord or leſſor ſhall "and may, without any formal demand or re-entry, ſerve "a declaration in ejectment for the recovery of the demiſed "premiſſes, or in caſe the ſame cannot be legally ſerved, "or no tenant be in actual poſſeſſion of the premiſſes, then "to affix the ſame upon the door of any demiſed meſſuage; "or in caſe ſuch ejectment ſhall not be for the recovery of "any meſſuage, then upon ſome notorious place of the "land, tenements, or hereditaments, compriſed in ſuch "declaration in ejectment, and ſuch affixing ſhall be "deemed legal ſervice thereof, which ſervice or affixing "ſuch declaration in ejectment, ſhall ſtand in the place of "a demand and re-entry; and in caſe of judgment againſt "the caſual ejector or nonſuit for not confeſſing leaſe, "entry, and ouſter, it ſhall be made appear to the court "where the ſaid ſuit is depending, by affidavit, or be "proved upon the trial, in caſe the defendant appears, "that half a year's rent was due before the ſaid declaration "was ſerved, and that no ſufficient diſtreſs was to be found "on the demiſed premiſſes, countervailing the arrears then "due, and that the leſſor or leſſors in ejectment had power "to re-enter; then, and in every ſuch caſe, the leſſor or "leſſors in ejectment ſhall recover judgment and execu-"tion in the ſame manner as if the rent in arrear had been "legally demanded, and a re-entry made; and in caſe the "leſſee or leſſees, his, her, or their aſſignee or aſſignees, or "other perſon or perſons claiming or deriving under the "ſaid leaſes, ſhall permit, and ſuffer judgment to be had "on ſuch ejectment, and execution to be executed there-

"on,

" on, without paying the rent and arrears, together with " full coſts, and without filing any bill or bills for relief in " equity, within ſix calendar months after ſuch execution " executed; then, and in ſuch caſe, the ſaid leſſee or leſ- " ſees, his, her, or their aſſignee or aſſignees, and all other " perſons claiming or deriving title under the ſaid leaſe, " ſhall be barred and foreclоſed from all relief or remedy, " in law or equity, other than by writ of error for reverſal " of ſuch judgment, in caſe the ſame ſhall be erroneous; " and the ſaid landlord or leſſor ſhall, from thenceforth " hold the ſaid demiſed premiſſes diſcharged from ſuch leaſe; " and if on ſuch ejectment verdict ſhall paſs for the de- " fendant or defendants, or the plaintiff or plaintiffs ſhall " become nonſuited therein, except for the defendant or " defendants not confeſſing leaſe, entry, and ouſter, then, " in every ſuch caſe, ſuch defendant or defendants ſhall " have and recover his, her, or their full coſts."

3. PROVIDED ALWAYS, " That nothing herein contained " ſhall extend to bar the right of any mortgagees of ſuch " leaſe, or any part thereof, who ſhall not be in poſſeſſion, " ſo as ſuch mortgagee or mortgagees ſhall and do, within " ſix calendar months after ſuch judgment obtained, and " execution excuted, pay all rent in arrear, and all coſts " and damages ſuſtained by ſuch leſſor, perſon or per- " ſons intitled to the remainder or reverſion as aforeſaid, " and perform all the covenants and agreements, which, " on the part and behalf of the firſt leſſee or leſſees, are " and ought to be performed.

The right of mortgagees not in poſſeſſion ſhall not be barred by this act.

4. " THAT IN CASE the ſaid leſſee or leſſees, his, her, or " their aſſignee or aſſignees, or other perſon or perſons " claiming any right, title, or intereſt, in law or equity, of, " in, or to the ſaid leaſe, ſhall, within the time aforeſaid, " file one or more bill or bills, for relief in any court of " equity, ſuch perſon or perſons ſhall not have or continue " any injunction againſt the proceedings, at law, on ſuch " ejectment, unleſs he, ſhe, or they do, or ſhall, within " forty days next after a full perfect anſwer ſhall be held " by the leſſor or leſſors of the plaintiff in ſuch ejectment, " bring into court, and lodge with the proper officer, ſuch " ſum and ſums of money, as the leſſor or leſſors of the plain- " tiff, in the ſaid ejectment, ſhall, in his, her, or their an- " ſwers ſworn to be due, and in arrear, over and above all " juſt allowance; and alſo the coſts taxed in the ſaid ſuit, " there to remain till the hearing of the cauſe, or to be

Of proceedings in equity.

" paid out to the leſſor or landlord, on good ſecurity, ſub-
" ject to the decree of the court; and in caſe ſuch bill or
" bills ſhall be filed within the time aforeſaid, and after ex-
" ecution is executed, the leſſor or leſſors of the plaintiff
" ſhall be accountable only for ſo much, and no more, as
" he, ſhe, or they ſhall really and *bona fide*, without fraud,
" deceit, or wilful neglect, make of the demiſed premiſſes,
" from the time of his, her, or their entring into the ac-
" tual poſſeſſion thereof; and if what ſhall be ſo made by
" the leſſor or leſſors of the plaintiff, happen to be leſs
" than the rent reſerved on the ſaid leaſe, then the ſaid
" leſſee or leſſees, his, her, or their aſſignee or aſſignees, be-
" fore he, ſhe, or they ſhall be reſtored to his, her, or their
" poſſeſſion or poſſeſſions, ſhall pay ſuch leſſor or leſſors, or
" landlord or landlords, what the money ſo to them paid,
" fell ſhort of the reſerved rent, for the time ſuch leſſor or
" leſſors of the plaintiff, landlord or landlords, held the ſaid
" lands.

On tender of arears made before trial, proceedings ſhall be ſtayed.

5. " PROVIDED ALWAYS, and be it further enacted, by
" the authority aforeſaid, that if the tenant or tenants, his,
" her or their aſſignee or aſſignees, do or ſhall at any time
" before the trial in ſuch ejectment, pay or tender to the
" leſſor or landlord, his executors or adminiſtrators, or his,
" her, or their attorney in that cauſe, or pay into the court
" where the ſame cauſe is depending, all the rent and ar-
" rear, together with the coſts; then, and in ſuch caſe, all
" further proceedings on the ſaid ejectment ſhall ceaſe, and
" be diſcontinued: and if ſuch leſſee or leſſees, his, her,
" or their executors, adminiſtrators or aſſigns, ſhall, upon
" ſuch bill filed as aforeſaid, be relieved in equity, he, ſhe,
" and they ſhall have, hold, and enjoy the demiſed lands,
" according to the leaſe thereof made, without any new
" leaſe to be thereof made to him, her, or them."

Doe on the Demiſe of Fletcher *v.* Lewis, 1 Burr. 614.

6. When there has been a recovery in ejectment, under this ſtatute, and the poſſeſſion acquieſced in, there cannot be a new ejectment brought on the ground that the judgment was by default, that it did not appear there had been any affidavit then made by the leſſor of the plaintiff, that " half a year's rent was in arrear, and no ſufficient diſtreſs to be had," for the proceedings, being under the ſtatute, the court will, in ſuch caſe, preſume that they were regular.

Downes *v.* Turner, Salk. 597. Bull. N. P. 97.

7. The defendant, in an action of ejectment for non-payment of rent, under this ſtatute, may ſtay the proceedings, on paying the arrears of rent and coſts of ſuit into

court, although the action is also brought on a clause of re-entry in the lease for not repairing; but if there has been a *tender* before service of the ejectment, or suing out of the writ, the proceedings are *irregular*, and may be set aside for irregularity. Stevenson v. Noright, 2 Black. Rep. 746.

8. An ejectment may be brought against a tenant who gives notice to quit at such a time, and does not quit accordingly, as well as when the landlord gives the tenant notice to quit. MS. cases of practice, and vide ante page 74.

9. A notice to quit, "*or* I shall insist on double rent," is good to support an ejectment. Dougl. 175.

10. When the possession of the tenant is *adverse*, it is not necessary to give him notice to quit; in order to support an ejectment against him. Cowp. Rep. 622.

11. A landlord must not receive any *rent* after an ejectment is brought, nor till the same is determined; if he does, it is a waiver of the *trespass* on which such action is grounded, and he will be nonsuited on the trial for so doing. His remedy, for the rent in arrear, is by action for the mesne profits. 2 Burr. 668.

12. On moving for judgment on the statute 4 *Geo.* 2. there must be an *affidavit*, stating that the landlord had a right to re-enter, &c. or that the defendant could not be legally served with a declaration (as the case may be); and that a copy thereof was affixed as aforesaid; or the court will not grant the rule.

V. *The Declaration; the Demise, Entry, and Ouster.*

1. THE action of ejectment lies in the king's bench, both by *bill* and by *original*; but in the common pleas, by *original* only.

2. THE DECLARATION in ejectment, must shew a good *demise*; should always set out the plaintiff's title as it is, and shew a good and subsisting one in him at the time of the ejectment brought; and therefore the demise, by the lessor of the plaintiff, must always be laid after his title has accrued, for the question is, whether the lessor could then make a lease? and it is usual to lay the demise as far back as possible; but it is not necessary to lay any day certain upon which the plaintiff entered; it is sufficient to lay a demise, and then say, in general, that he *afterwards* entered. Yelv. 166. 2 Lev. 140. 1 Sid. 7. 1 Stra. 550. Bull. N. P. 105. 3 Wilf. 274.

3. The

Salk. 257. 2 Black. Rep. 940.

3. The declaration ſhould ſtate the ejectment by the defendant, as done ſubſequent to the date of the ſuppoſed leaſe made to him by the leſſor of the plaintiff; for otherwiſe, the ejectment, which is the injury complained of, would precede the time of the accruing of the plaintiff's title, and ſo there would be no cauſe of action. But, although this is the right and proper form of declaring, yet this being a fictitious action, it is not fatal if laid otherwiſe; for caſes have occurred, in which the ejectment has been laid prior in point of time to the demiſe, and yet the court has held it to be good; that is, where the plaintiff declares, on a certain demiſe, and that the defendant *afterwards* ejected him, and then makes the *ſcilicet* mention a day prior to the demiſe; in which caſe, the "*ſcilicet*," being inconſiſtent with the "*afterwards*," ſhall be rejected as ſurpluſage. This inconſiſtency will not vitiate the declaration, although it be objected to *before trial*; and, *after verdict*, almoſt all repugnances will be cured, except ſuch as affect *the title* or are in *the proceſs*.

Bull. N. P. 106. Cro. Jac. 96. Eſpinaſſe's Digeſt 154.

2 Burr. 1159. 2 Stra. 1211.

11 Co. 55.

4. The declaration ſhould ſtate the certain *quantity*, and the *nature* of the land to be recovered; as arable, paſture, meadow, &c. for where the ejectment was for a meſſuage and cloſe, containing three acres, and verdict for the plaintiff, the judgment was arreſted; for it was not ſufficient to ſtate the *quantity* only, without alſo ſetting out the *nature* of the land: And ſo, where it was for a cloſe of meadow, called *Partridge's Lees*, containing ten acres more or leſs, it was held to be ill for not ſhewing the preciſe *quantity*. So alſo of different kinds of land, it muſt ſhew how much there is of one kind, and how much of the other; for an *uncertainty* in the declaration, in theſe reſpects, is an incurable fault. The plaintiff, however, is not bound to declare for the *exact quantity* which he has a right to recover; for he may declare for any indeterminate quantity, and the general form now uſed is ſo, *viz.* one thouſand acres of paſture, two thouſand acres of meadow, &c. and he ſhall recover according to the quantity to which he proves a title. So if the plaintiff declare for any thing, and prove a title but to a *moiety*, he ſhall only recover ſo much; as where it was for *a houſe*, and the proof only went to ſhew that *part* of it was built by encroachment on the plaintiff's land; he recovered for ſo much as was ſo built on his land.

Bull. N. P. 109. Salk. 254.

Sid. 295. 3 Wilſ. 23.

Cro. Eliz. 13.

2 Roll. Abr. 704. 719. 3 Lev. 334.

5. But although the plaintiff may thus recover in ejectmen *leſs* than he declares for; yet if he prove a title to

more

more than he has declared for, he ſhall not recover it, for he can recover no more than he goes for in the declaration: So, although he declare for a time *longer* than he has a right to recover, yet he ſhall recover according to what his title really is: But a very exact deſcription of the nature of the land is not required, and greater latitude is now admitted than formerly; becauſe the leſſee of the plaintiff is to *ſhew* the lands to the ſheriff, and to take poſſeſſion of them at his peril. 1 Burr. 326. Bull. N. P. 106. 1 Stra. 71. 2 Stra. 1063.

6. THE ENTRY which was neceſſary in ejectment, is now rendered uſeleſs by the GENERAL CONFESSION of the defendant of *leaſe, entry,* and *ouſter*; but by 4 *Ann. c.* 16. *ſ.* 16. "No claim or entry ſhall be ſufficient to avoid *a fine* levied "with *proclamations,* unleſs the action be commenced with-"in one year after *making* ſuch entry or claim; nor to "avoid the ſtatute of limitation, unleſs the action be "commenced within the ſame time;" and, therefore, in the caſe, and only in the caſe of a fine, it is neceſſary to prove an *actual entry*. Thus where a fine was levied, the leſſor of the plaintiff proved, that he had gone to the houſe in queſtion; and, at the gate, ſaid to the tenant, that he was heir of the houſe and land, and forbad him for to pay any more rent to the defendant, but that he had not entered the houſe, when he made the demand, on which it was agreed, that the claim at the gate, without entring the houſe, was inſufficient. Then it was proved, that there was a court before the houſe, and which belonged to it; and that, though the claim was at the gate, yet that it was on the land, and not in the ſtreets, and that was holden to be a good entry, and clearly to ſupport the ejectment. So where a ſtranger made an entry on the premiſſes, on behalf of the leſſor of the plaintiff, but without any authority from him at that time, claiming for him under a will; but the leſſor of the plaintiff aſſented to it before the day laid in the demiſe; the court were clearly of opinion, that the entry was ſufficient to ſupport the ejectment brought on the title, the ſubſequent aſſent having eſtabliſhed the validity of the firſt entry. Salk. 286. Bull. N. P. 102. Dougl. 468.

7. As to OUSTER, the confeſſion of leaſe, entry, and ouſter, is ſufficient to bar a non-ſuit for want of proof of actual ouſter. 3 Burr. 1897.

VI. *Service of the Declaration and its Incidents.*

2 Stra. 1064.

1. If it be known where the tenant lives, he ſhould be *perſonally* ſerved with the declaration, if he does not live on the premiſſes for which the ejectment is brought; and, therefore, where the attorney for the plaintiff knew where the defendant lived, but did not ſerve him: it was held to be irregular.

The ſervice of declaration muſt be *perſonal* if it be poſſible.

2. So the words of the 4 *Geo.* 2. *c.* 28. are, "That "the leſſee may, without any formal demand or entry, "ſerve a declaration in ejectment, in caſe the ſame cannot "be *legally ſerved*, or no tenant be in actual poſſeſſion, then "affix the ſame on the door of any demiſed meſſuage, or "in caſe there be no meſſuage, then upon ſome notorious "place on the land." In proceeding, therefore, both under this ſtatute, as well as at common law, the leſſor of the plaintiff muſt proceed by perſonal ſervice if poſſible.

2 Black. Rep. 800. Salk. 255.

3. But if the tenant himſelf cannot be found, then ſervice on a *wife* or *ſervant* on the *premiſſes* ſhall be ſufficient. If the ſervice be on the *wife*, it is alone ſufficient to affect the tenant; but if it be on a ſervant, in that caſe there ſhould be *ſome acknowledgement* for the tenant that he received it; and, in all caſes, when the tenant cannot perſonally be ſerved, the court will, by rule of court, order particular ſervices of the declaration to be good, ſo as to give a good judgment for the plaintiff; as on a perſon in the houſe with another copy fixed to the premiſſes; ſo a ſervice on a woman who called herſelf *M. C.* (then in the houſe) on an affidavit, that *M. C.* was either not at home, or denied, and that one copy of the rule was affixed to the door, and another thrown in at the window, was deemed good ſervice.

2 Burr. 1106.

2 Burr. 1161. 1181.

1 Stränge 755.

Lilly's Prac. Reg. 499.

4. If there are ſeveral tenants of the premiſſes, there muſt be a declaration, in ejectment, delivered to each of them.

5. The perſon alſo who ſwears to the ſervice of the declaration, muſt ſwear poſitively, that ſuch a one is tenant in poſſeſſion; that he read the indorſement to him; and that he acquainted him with the contents thereof; upon this affidavit, the plaintiff may move the court for judgment againſt *the caſual ejector*, which is always granted, unleſs the tenant, in due time, enter into the common rule to confeſs *leaſe*, *entry*, and *ouſter*.

6. In the king's bench, if the premiſſes are ſituate in *London* or *Middleſex*, and the notice requires the tenant to appear

appear on the firſt day, or within the firſt four days of the next term, the plaintiff ſhould regularly move for judgment againſt the caſual ejector in the beginning of that term, and then the tenant muſt appear within four days incluſive after the motion, or the plaintiff will be intitled to judgment. If, however, the motion be deferred till the latter end of the term, the court will order the tenant to appear in two or three days, and ſome times immediately, that the plaintiff may proceed to trial at the ſitting after term; though, if the motion be not made before the laſt four days of the term, the tenant need not appear until two days before the eſſoin day of the ſubſequent term, and ſhould the notice, in ſuch caſe, require the tenant to appear in the next term generally, the tenant hath the whole of that term to appear in.

7. In the common pleas, if the premiſſes are ſituate in *London* or *Middleſex*, and the tenant has notice to appear in the beginning of the term, the plaintiff cannot take any thing by his motion for judgment againſt the *caſual ejector* for default of appearance, unleſs ſuch motion be made within one week next after the firſt day of every *Michaelmas* and *Eaſter* term, and within four days next after the firſt day of every *Hilary* and *Trinity* term; but it has been holden, that this rule does not extend to the caſe of a *vacant poſſeſſion*, under the ſtatute 4 *Geo.* 2. *c.* 28.

8. In country cauſes, though the declaration be delivered before the eſſoin day of *Eaſter* or *Michaelmas* term, yet the tenant, in both courts, is allowed till four days after the next iſſuable (that is *Hilary* or *Trinity*) term, to appear; and if the cauſe ariſe in *Cumberland*, or in any other county where the aſſizes are held but once a year, the tenant is not compellable to appear till four days after the term preceding the aſſizes. But, in the *king's bench*, the plaintiff muſt move for judgment the ſame term in which the tenant has notice to appear, though the practice is different in the *common pleas*, for there he may move for judgment at any time during the next iſſuable term.

9. By 11 *Geo.* 2. *c.* 19. "The tenant muſt give notice "to his landlord of any declaration in ejectment ſerved on "him, under penalty of three years rent." But this ſtatute only extends to caſes where the ejectment is on a title *adverſe* to that of his landlord; and not to caſes where it is brought by the *mortgagee*, to be put into poſſeſſion of the mortgaged

Buckley *v.* Buckley, 1 Term Rep. 647.

mortgaged premiſſes, without diſturbing the leſſee's poſſeſſion.

4 Burr. 1996. 10. Where the tenant does not give notice to his landlord of the ſervice of the declaration, and there is judgment againſt the *caſual ejector*, the court will ſet aſide the judgment, and order the tenant to pay all coſts to the leſſor of the plaintiff, on the landlord's entering into the uſual rule to try the title: OR the landlord may bring a *writ of error*, which operates as a *ſuperſedeas* of the proceedings, under the ſtatute 11 *Geo.* 2. *c.* 19. and ſtay the proceedings.

2 Stra. 1241.

1 Term Rep. 647. 11. A tenant, to a mortgagee, who does not give him notice of an ejectment, brought by the mortgagee, to enforce an attornment, is not liable to the penalties of 11 *Geo.* 2. *c.* 19. *ſ.* 12. for ſecreting ejectments.

VII. *Defence and Plea.*

Runnington's Ejectments, 70. Lilly's Prac. Reg. 499. Comb. 209. 1. BY the common law, no perſon is permitted to defend in ejectment, unleſs he be *tenant*, and is, or hath been in poſſeſſion, or receipt of the rent; becauſe it is an act of *champerty* for any perſon to interpoſe and cover the poſſeſſion with his title; and if the party would make any perſon defendant with another, who was not concerned in the poſſeſſion of the tenements; this was a miſchief at the common law; becauſe, if the plaintiff recover againſt one of the defendants, the ſtranger had no remedy for his coſts; but this is remedied by 8 & 9 *Will.* 3. *c.* 10. whereby *coſts* are given to ſuch ſtrangers, unleſs the judge *certifies*, immediately on the trial, that the party had *probable cauſe* for making him defendant.

Salk. 257. 7 Mod. 70. 3 Burr. 1301. 2. The *tenant in poſſeſſion*, muſt apply to the court to be made defendant in the room of the *caſual ejector*. This is done by rule of court, on condition of his confeſſing *leaſe*, *entry*, and *ouſter*.

Salk. 259. 3. If the tenant do not appear, and enter into THE COMMON RULE, the plaintiff muſt be nonſuited; and then, upon the return of the *poſtea*, judgment is given againſt the *caſual ejector*; and it is indorſed, that the nonſuit was for not confeſſing *leaſe*, *entry*, and *ouſter*: Upon this the plaintiff is intitled to have his coſts taxed againſt the defendant; and if they are not paid, AN ATTACHMENT will go.

Salk. 246. Ld. Ray. 751. 7 Mod. 39. 4. It was formerly holden, that the confeſſion of *leaſe*, *entry*, and *ouſter*, was not a confeſſion of any *entry* ſufficient to make out the plaintiff's title, when an entry was neceſſary thereto;

thereto; as where an entry was neceſſary to avoid *a fine*, or to take advantage of *a condition broken*; and, in the caſe of an ejectment brought by one *tenant in common* againſt his fellow, the plaintiff was, notwithſtanding the rule, put to the proof of an *actual ouſter*. But now, though there muſt be an *actual entry* to avoid A FINE, and the action upon that entry muſt be commenced within a year afterwards; (*a*) yet in the other two, and in all other caſes, the confeſſion of leaſe, entry, and ouſter, is deemed ſufficient. 3 Burr. 1897. (*a*) By 4 & 5 Anne, c. 16. ſ. 16. ante pl. Ld. Ray. 750. 3 Burr. 1897.

5. If there are ſeveral defendants, and ſome of them do not appear and confeſs *leaſe*, *entry*, and *ouſter*, a verdict will be taken for them, and the plaintiff ſhall have judgment againſt the *caſual ejector*, for the lands of which theſe defendants were in poſſeſſion. 1 Ld. Ray. 729. 1 Barnes 118.

6. By 11 *Geo.* 2. *c.* 19. "Where a declaration is ſerved "on the tenant, the landlord may, by leave of the court, "make himſelf *defendant* with the tenant in poſſeſſion, in "caſe he appears. But in caſe ſuch tenant ſhall refuſe or "neglect to appear, judgment ſhall be ſigned againſt the "*caſual ejector*; and if the landlord ſhall deſire to appear "by himſelf, and ſhall conſent to enter into the like rule "as the tenant, in caſe he had appeared, ought to have "done; the court ſhall permit him ſo to do, and order a "ſtay of execution upon ſuch judgment till further orders."

7. The landlord has, under this ſtatute, *a right* to be made defendant if he applies; but it is *optional* in him to do ſo or not; the court, however, has no juriſdiction to admit any perſon but *the landlord* to defend inſtead of the tenant; but it was ſaid, by Lord MANSFIELD, that it is not neceſſary that the perſon applying to be made defendant, ſhould be *actual landlord*, but that it is ſufficient if he have a *privity of intereſt* in the lands; and therefore a *purchaſer of a reverſion*, which ſeemed to be a pretended title, and where no rent had ever been paid, was held to be admiſſable as a defendant. So it ſhould ſeem, that a *mortgagee out of poſſeſſion*, may be admitted to defend on the tenant's refuſal. And if the perſon who wiſhes to defend, be neither *tenant* nor *landlord*, he muſt move the court on an affidavit of the fact to be made defendant inſtead of the *caſual ejector*; but this can only be done with the tenant's conſent. Salk. 256. Barnes 193. 3 Burr. 1299. 2 Eſpinaſſe's Digeſt 166. Stiles 368.

8. Where ſeveral ejectments are brought for the *ſame premiſſes*, upon the *ſame demiſe*, the court, on motion or a judge at his chambers, will order them to be CONSOLIDATED. Run. Eject. 74.

9. On

2 Burr. 756. 9. On the landlord being made a defendant, under 11 *Geo.* 2. *c.* 19. on non-appearance of the tenant, the court will ſtay execution againſt the caſual ejector.

1 Black Rep. 257. 10. *Qu.* Whether one claiming, as lord by eſcheat, ſhall be admitted defendant in an ejectment brought againſt the tenant in poſſeſſion, by the leſſee of one claiming as heir at law.

Norris *v.* Dancaſter 3 Term Rep. 783. Lovelock *v.* Dancaſter, 4 Term Rep. 122. 11. The court will not permit *a ceſtui que truſt*, but they will permit *a deviſee in truſt*, not having been in poſſeſſion, to be made defendant, inſtead of the tenant, as landlord, under 11 *Geo.* 2. *c.* 19. *ſ.* 13.; and they will alſo permit the *heir at law*, or *remainder-man*, claiming under the ſame title.

Run. Eject. 105. 12. As to THE PLEA in this action, the general rule is, that whatſoever bars the *right of entry*, is a bar to the plaintiff's title; therefore the plaintiff muſt prove *ſeiſin* within *twenty years* in himſelf or his anceſtors; or he muſt prove ſeiſin in a third perſon, of a particular eſtate in the land, and that he claimed within twenty years after the reverſion accrued; or that he was an infant, feme-covert, *non compos*, impriſoned, or beyond the ſea at the time when the title accrued, and that he claimed within twenty years after theſe diſabilities ceaſed. Hence it is, that the defendant need not *plead* the ſtatute of limitation, as he muſt do in other actions.

1 Burr. 11.

Run. Eject. 105. 13. A fine and non-claim, or a *diſcent caſt*, which take away the entry, are good pleas in this action.

5 Co. 105. 9 Co. 77. 14. So an *accord*, with *ſatisfaction*, is a good plea in ejectment, for it is an action of *treſpaſs* in its nature.

2 Burr. 1046. Ld. Ray. 1418. 15. *Ancient demeſne*, is likewiſe a good plea in ejectment; but leave muſt be had of the court to plead it: and the affidavit to obtain ſuch leave, muſt ſhew that the lands are holden of *a manor*, which manor is *ancient demeſne*.

Carth. 180. 16. But theſe pleas are now ſeldom pleaded; for, according to the modern practice in ejectment, the defendant, if he appear, is generally bound, by the conſent rule, to plead the *general iſſue* of NOT GUILTY.

Yelv. 180. Cro. Car. 261. 17. If the plaintiff, *after iſſue* and *before trial*, enter into part of the premiſſes, the defendant may, at the aſſizes, plead this as a plea *puis darrien continuance* in BAR to the plaintiff's action; but it is in the diſcretion of the judges whether they will receive it or not.

1 Mod. 252. 18. The death of the nominal plaintiff cannot be pleaded in abatement of an ejectment; for while there is a man

man of the name in *rerum natura*, the court will intend he was the plaintiff.

19. The court will give leave to plead to the jurisdiction, before judgment *nisi* against the casual ejector. 1 Black. Repr 197.

VIII. *Evidence and Verdict.*

1. IN EJECTMENT, the plaintiff must recover, by the strength of his own title, not by the weakness of his adversary's; for whom *possession* is a good title. The plaintiff, therefore, must always shew a good and sufficient title in himself, or he cannot recover; so that it will be sufficient for the defendant in ejectment to prove a title *out* of the lessor of the plaintiff, though he can prove no title *in* himself; but if he prove a title out of the lessor of the plaintiff, it must be a good and subsisting one elsewhere. 4 Burr. 2484. Bull. N. P. 100.

2. A lease, under a power, is not sufficient evidence of possession; for a surrender of such lease might and ought to be presumed at the trial. Bull. N. P. 112. 1 Burr. 126.

3. On an ejectment for *mines*, evidence of being lord of a manor, is not sufficient proof of possession; it being necessary to shew an actual possession. Run. Ejec. 113.

4. The defendant, notwithstanding his confession of *lease*, *entry*, and *ouster*, may deny that he is in possession of the premisses for which the plaintiff contends, and put him to prove it; which, if he cannot do, he must be nonsuited. Run. Ejec. 113.

5. In an ejectment for a rectory, if the plaintiff prove the *taking* of the tithes only, and not an *entry* into the glebe, he shall be nonsuited; for where several matters are necessary to give a compleat title, the plaintiff must prove all these requisites. Latch. 62.

6. In an ejectment for a rectory, the plaintiff ought to prove that his lessor was admitted, instituted, and inducted; that he had read the thirty-nine articles; that he had declared his assent and consent to all things contained in the book of Common Prayer; but he need not prove a title in his patron. 1 Sid. 220. Bull. N. P. 105. 2 Black. Rep. 1228.

7. Ejectment being an action of *trespass*, every part of the declaration must be proved; therefore, if it be brought for a house in *Peter-street*, in the *ward of Cheap*, and it appear to be in the *ward of Farringdon*, and that no part of *Peter-street* is in the *ward of Cheap*, the plaintiff must be nonsuited. 1 Stra. 595.

Packer v. Walker, 3 Wilf. 25.

8. If a landlord bring ejectment for lands demiſed *at will*, the tenant, by conſtruction of law, becomes tenant from *year to year*, and the plaintiff muſt prove "that half a "year's previous notice was given to the tenant to quit, "or to his executors, in caſe of his death," or he ſhall be nonſuited at the trial. But where *the tenant* has attorned to ſome other perſon, or done ſome other act, *diſclaiming* to hold *as tenant* to the landlord; in ſuch caſe no notice is neceſſary.

Bull. N. P. 96.

Doe on the demiſe of Cheney v. Batten. Cowper 243.

9. If a landlord give a regular notice to quit at *Michaelmas*, and, on ejectment brought, it appear in evidence, that he accepted rent from the tenant from *Michaelmas* to *Chriſtmas*; this does not of itſelf amount to a waiver of the notice, but it ſhall be left to the jury *quo animo* he received it; as it might be a waiver only of the double rent to which the leſſor was intitled, or he might have taken it under the terms, that it ſhould not be a waiver of the notice.

Cowp. 247.

10. But on an ejectment on 4 *Geo.* 2. *c.* 28. for non payment of rent, if it appear that the landlord accepted rent after the time of the demiſe laid, this is a waiver of the right of recovery; for it is a *penalty*, and by the acceptance of rent the penalty is waived.

Bull. N. P. 96.

11. So alſo on a proviſo to re-enter for a forfeiture, if the leſſor bring covenant for half a year's rent, ſubſequent to the demiſe laid in the ejectment, it is a waiver of the right of entry for the forfeiture.

Run. Eject. 117.

12. Where the leſſor claims, as heir at law of *A.* it is ſufficient to prove, that *A.* was in poſſeſſion, and that the leſſor is his heir; for it ſhall be intended, *prima facie*, that *A.* was ſeiſed in fee till the contrary appear.

Burt v. Barlow, Eaſter Term, 19 Geo. 3. 4 Burr. 2058.

13. This action ſometimes turns on the queſtion of *marriage*.—A marriage, in *fact*, may be proved either by a copy of the regiſter, or by *viva voce* evidence of the ceremony, corroborated by circumſtances, identifying the parties. But, in this action, it is not neceſſary to prove a marriage in *fact*: a *reputed marriage* will be ſufficient; and that may be ſubſtantiated by cohabitation, reputation, and other circumſtances from which a marriage may be inferred. With reſpect to *cohabitation*, it is the practice to admit evidence of what the parties have been heard to ſay, as to their being or not being married.

Burr. 1897.

14. The confeſſion of leaſe, entry, and ouſter, is ſufficient to bar a non-ſuit for want of proof of actual ouſter.

15. One tenant in common cannot ſet up an outſtanding unſatisfied term in bar to an ejectment for a moiety by another tenant in common. 1 Term Rep. 759.

16. Where a truſt term is a mere matter of form, and the deeds mere muniments of another's eſtate, it ſhall not be ſet up againſt the real owner. Ibid.

17. A mortgagee cannot ſet up the title of a third perſon againſt his mortgagor in ejectment; nor can a tenant ſet up the title of a third perſon to bar his own leſſor. Ibid.

18. In an ejectment brought by Mr. *Duncombe*, he could not prove the time when the term commenced; and the tenant proving it different from the time to quit mentioned in the notice, the plaintiff was nonſuited. 1 Term Rep. 161.

19. The truſtees of a public turnpike act, which empowers them to erect toll-houſes, and mortgage the *tolls*, and which declares that there ſhall be no priority among the creditors, have no authority to mortgage the *toll-houſes* or *gates*; but if, in fact, they have made ſuch a mortgage, and an EJECTMENT is brought againſt them by the mortgagee, they are not *eſtopped* by their deed from inſiſting that the act gives them no ſuch power. Mytton *v.* Gilbert, 2 Term Rep. 169.

20. Declarations, by *tenants*, are admiſſible evidence after their death, to ſhew that a certain piece of land is parcel of the eſtate which they occupied; and proofs that they exerciſed acts of ownerſhip in it, not repelled by contrary evidence, is deciſive. Davis *v.* Pearce, 2 Term Rep. 53.

21. Where the plaintiff claimed as deviſee in remainder, under a will twenty-ſeven years before, under which there was no poſſeſſion, *declarations* by the tenant who was in poſſeſſion at that time that he held as tenant to the deviſor, are admiſſible evidence to prove *ſeiſin* in the deviſor. Holloway *v.* Raikes, 2 Term Rep. 55.

22. If there be an agreement before marriage, that a ſettlement ſhall be made of the wife's eſtate, reſerving to her a power of diſpoſing of it, which agreement is ſigned by the intended huſband and wife, but not ſealed; and, before the marriage, the wife diſpoſes of it to the huſband who ſurvives her, and deviſes the eſtate by will; the title of his deviſee is ſuch a doubtful equity, as cannot be ſet up in an EJECTMENT againſt the title of the wife's heir at law. Hodſon *v.* Staple 2 Term Rep. 684.

23. A ſatisfied term may be preſumed to be ſurrendred, but an unſatisfied term, raiſed for the purpoſe of ſecuring an annuity, during the life of the annuitant, cannot; and may be ſet up as a bar to the heir at law, even though he claim only ſubject to the charge. Ibid.

Jordan v. Ward, Term Rep. in Com. Pleas 97.

24. In ejectment: tenant for life makes a leaſe for years, to commence on a certain day, and dies (before the expiration of the leaſe) in the middle of the year. The remainder-man receives rent from the leſſee (who continues in poſſeſſion, but not under a freſh leaſe) for two years together, on the days of payment mentioned in the leaſe. This is *evidence* from which the court will preſume an agreement between the remainder-man and the leſſee, that the leſſee ſhould continue to hold from the day, and according to the term of the original demiſe: ſo that notice to quit *ending on that day*, is proper.

2 Eſpinaſſe's Digeſt 215.

25. As to THE VERDICT, it is a rule that the plaintiff, in ejectment, ſhall always recover according to the title which he makes out, though not conſiſtent with that ſtated in the declaration; as where the plaintiff having a title but to *five* years, declared for *ſeven*; he may, notwithſtanding this, recover according to his title.

Carruthers v. Dendien, Bull. N. P. 106.

Cro. Eliz. 186.

26. If the declaration, in ejectment, go for ſeveral things, and there is a general verdict, though the declaration is bad as to part, yet the plaintiff may recover for the remainder.

Dyer. 47.

27. In a recovery in ejectment of one hundred acres of land, twenty of paſture, &c. without mention of any *houſe* or *garden*; the plaintiff ſhall nevertheleſs recover all the *erections* thereon.

Crompton's Practice 207.

28. But as *the verdict* is the ground of *the judgment*, it ought not to be entered for more land, or different parcels, than the defendant was found guilty of.

IX. *Judgment and Coſts.*

1 Burr. 114. 1 Burr. 60.

1. THE JUDGMENT in ejectment, is a recovery of *the poſſeſſion*, (not of the *ſeiſin* or *freehold*) without prejudice to *the right*, as it may afterwards appear between the parties. He who *enters* under it, in truth and ſubſtance, can only be poſſeſſed according to right *prout lex poſtulat*. If he have a freehold, he is in as a freeholder; if he have a chattel actual, he is in as a termor; and in reſpect of the freehold, his poſſeſſion enures according to his right. If he have no title, he is in as a treſpaſſor; and, without any re-entry by the true owner, is liable to account for the profits.

Run. Eject. 126. 1 Stra. 531.

2. The judgment in ejectment, is either againſt the *caſual ejector* by default, or againſt *the tenant* upon a verdict; the former is generally before, the latter is always after an appearance;

pearance; but the *casual ejector* can in no case confess a judgment.

3. If judgment be signed by default against the casual ejector, the landlord may move to set it aside, if the tenant have not given him the ejectment; and the court will make the tenant pay the costs; for the possession ought not to be changed, where there has been no trial or opportunity of trial. 4 Burr. 1997.

4. If judgment is regularly signed, but without loss of trial, it may be set aside, on payment of costs, and taking notice of trial. Stra. 975.

5. When the landlord is admitted to defend instead of the tenant, the judgment is consequently entered against the *casual ejector*, with a stay of *execution* till further order; if the landlord be afterwards non-suited for not confessing *lease*, *entry*, and *ouster*, or if a verdict be given against him upon the trial, the plaintiff must move for leave to take out execution against the *casual ejector*, and the day of shewing cause against the motion, is the proper time for the landlord to make his stand against the plaintiff's taking out execution on this judgment, and getting into possession. Barnes 182. 2 Burr. 757.

6. The plaintiff cannot have judgment against the casual ejector, till common bail is filed. Gilbert 23.

7. When the plaintiff in ejectment is non-suited at the trial for want of the defendant's confessing lease, entry, and ouster, he is not intitled to sign judgment against the *casual ejector*, till the *postea* comes in on the *day in bank*. Doe *v.* Copeland 2 Term Rep. 779.

8. As to COSTS in ejectment—*If an infant* deliver a declaration to the defendant, some friend or guardian must be set up as plaintiff to answer the defendant's costs. But if such person die insolvent, so that the defendant has no remedy by this rule, the infant himself must answer for the costs; because the rule was entered into for the defendant's benefit: even infants must not disturb the possession of others by unlawful entries, without being punished with costs. So also the defendant may require security to be given for costs, if an ejectment be brought upon the demise of a person residing in the island of *Antigua*, or in *Ireland*. Stra. 694. 932. Hardw. 56. 1 Wilf. 130. Sayer's Law of Costs 153.

9. If an action for mesne profits be brought by the nominal plaintiff, after a recovery in ejectment, the court will stay proceedings until security be given for the costs. Pike *v.* Caben, Sayer 154. 2 Burr. 1177.

10. But where it appears that *the title* of the lessor of the plaintiff is at an end, the court will not stay the proceedings 2 Stra. 1056.

on the motion of the defendant, becauſe he may proceed for damages and coſts, but they will oblige the plaintiff to find ſecurity.

1 Stra. 516. 11. If there is an ejectment againſt ſeveral, and the plaintiff is non-ſuited, he may pay the coſts of the non-ſuit to which of the defendants he pleaſes.

12. By 8 & 9 *Will.* 3. *c.* 11. "*In ejectment* againſt ſeveral, if any one or more is acquitted by verdict, he "ſhall recover his coſts againſt the plaintiff, unleſs the "judge ſhall certify, in open court, that there was good "cauſe for making ſuch perſon a defendant."

13. In all caſes, if it appear upon the *pleadings*, that the *freehold* or *title* was in queſtion, there needs no certificate to intitle the plaintiff to *full coſts*, though the damages are under *forty ſhillings*.

2 Black. Rep. 763. 14. A new defendant may give rule to reply, and *non pros* the plaintiff; but can have no *coſts*, unleſs the leſſor of the plaintiff has joined in the rule by conſent.

2 Black. Rep. 904. 1158. 1180. 15. The court will ſtay proceedings until the coſts of a former ejectment be paid; the leſſee of the plaintiff, in the former ejectment, never entering into the conſent rule.

Doe on the demiſe of Gibbs v. Alſton, 1 Term Rep. 490. 16. Where the leſſor of the plaintiff had abandoned his ſuit in another court, and brought a freſh ejectment in the king's bench, the court refuſed an application, requiring him to give ſecurity for the coſts: For there are only three inſtances where the court will interfere to oblige the plaintiff to give ſecurity for coſts—FIRST, when *an infant* ſues; in which caſe his *prochein ami*, or guardian or attorney, muſt give ſecurity—SECONDLY, when the plaintiff reſides abroad—THIRDLY, when there has been a former ejectment; in which caſe, the court will ſtay proceedings, in the ſecond ejectment, till the coſts of the former are paid.

X. *Of Execution; and Writ of Error.*

2 Sid. 156. 1 Roll Rep. 213. Noy 71. Palm. 263. 2 Cromp. Pract. 212. 1. THE plaintiff in ejectment having obtained and ſigned his judgment, may, without any writ of execution, enter the premiſſes recovered at his own peril; but he may more ſecurely be put into poſſeſſion, by ſuing out an *habere facias poſſeſſionem*; if he neglect, however, to ſue out execution within a year and a day after judgment, he muſt, as in other caſes, bring a *ſcire facias*, to review the judgment, and the court will award a reſtitution, *quia erronicè emanavit*.

2. If

2. If the plaintiff die within the year and the day, his executors cannot take out execution without *a ſcire facias*, becauſe they are not parties to the judgment; although if an execution be properly ſued out in the life-time of the teſtator, the ſheriff may execute it after his death; for it is an authority from the court, and not from the party. Run. Eject. 153.

3. Where the leſſor of the plaintiff died in the vacation, and the writ of poſſeſſion was taken out after his death, but was *teſted* of the laſt day of the preceding term, and ſo over-reached the time of his death, the writ was held to be regular. Doe on the demiſe of Beyer, *v.* Roe. 4 Burr. 1970.

4. If the plaintiff hath judgment with a ſtay of execution for a year, he may, after the year, take out his execution without a *ſcire facias*; but he ought to move the court for a *ſcire facias*, leſt the execution ſhould be defeated *quia erronicè emanavit*. 6 Mod. 288. 1 Keb. 785.

5. If the defendant bring a writ of error, and thereby hinder the plaintiff from taking his execution within the year, and the plaintiff in error is nonſuited or the judgment affirmed, the defendant in error may proceed to execution after the year without a *ſcire facias*; becauſe the writ of error was a *ſuperſedeas* to the execution and the plaintiff muſt acquieſce till he hear the judgment above. 5 Co. 88. Cro. Eliz 416 6 Mod. 288. 2 Inſt. 471.

6. The words of the writ of execution being "*quod habere facias poſſeſſionem*," there muſt be a full and actual poſſeſſion given by the ſheriff, and conſequently all power neceſſary for this end muſt be given to him; therefore if the recovery be of a houſe, the ſheriff may juſtify breaking open the door, if he be denied entrance by the tenant, becauſe the writ cannot otherwiſe be executed. 5 Co. 91.

7. If the plaintiff recover ſeveral meſſuages in the poſſeſſion of different perſons, the ſheriff muſt go to each houſe and deliver the poſſeſſion thereof, which is done by turning the tenants out of poſſeſſion of each of the houſes. 1 Roll. Abr. 886.

8. In taking poſſeſſion under this writ, the practice is for the plaintiff to give the ſheriff ſecurity to indemnify him from the defendants, and then for the ſheriff to give execution of what the plaintiff demands; but if the plaintiff take more than he has recovered and ſhewn title to, the court will ſet it right in a ſummary way. 1 Burr. 626. 5 Burr. 2673.

9. The writ of execution is only returnable at the election of the plaintiff, for the court, at the inſtance of the defendant, will not direct the writ to be returned; and this 2 Keb. 245. 1 Palm. 289. 6 Mod. 27.

seems to be left to the choice of the plaintiff, that he may do what is most to his advantage, in order to have the full benefit of his judgment; and the best way to effect that, is to suffer him to renew the execution at his pleasure, until a full execution be had. But if the writ be once returned, though not filed, no new *habere facias* shall issue.

Cromp. Pract. 218.

6 Mod. 27.

10. If the officer be disturbed in the execution of the writ, on an affidavit, the court will grant an attachment against the party, whether he be the defendant or a stranger; and the process is not understood to be *executed*, nor the execution compleat, until the sheriff and his officers are gone, and the plaintiff left in *quiet possession*.

1 Keble, 779, 785.

11. But after possession given, either on the *habere facias*, or by the agreement of the parties, the law seems to make a difference where the plaintiff is turned out of possession by *the defendant*, and where by *a stranger*. When it is done by the defendant himself, the plaintiff may have either a new *habere facias* or an attachment, because the defendant shall never, by his own act, keep the possession which the plaintiff hath recovered from him by due course of law. But where a stranger turns the plaintiff out of possession after execution fully executed, the plaintiff is put to his new action, or to an indictment for the *forcibly entry*, where *the force* will be punished. The reason is, that the title was never tried between the plaintiff and the stranger, who may claim the land by a title paramount the plaintiff, or he may come in under him; and then the recovery and execution in the former action ought not to hinder the stranger from keeping that possession which he may have a right to. If the law were otherwise, the plaintiff might by virtue of a new *habere facias*, turn out even his own tenants, who come in after the execution is executed, whereas the possession was given him only against the defendant in the action, and not against others who were not parties to the suit.

No EXECUTION in ejectment shall be stayed by writ of error, unless the plaintiff in error becomes bound for the *costs*.

12. As to WRIT OF ERROR, it is enacted by 16 & 17 *Car.* 2. *c.* 8. "that no execution shall be stayed by writ of error, upon any "judgment after verdict in *ejectment*, unless the *plaintiff in error* "shall become bound in a reasonable sum to pay the *plaintiff in ejectment* all such costs, damages, and sums of money, "as shall be awarded to such plaintiff upon the judgment being affirmed, or on a nonsuit, or discontinuance had; and in "case of affirmance, discontinuance, or nonsuit, the court "may issue a writ to enquire as well of the *mesne profits*, as of "the damages by any *waste* committed after the first judg-

"ment,

" ment, and are thereupon to give judgment and award *exe-*
" *cution* for the ſame, and alſo for coſts of ſuit."

13. The defendant on becoming bound in double the rent, which is the uſual ſum named, is entitled to his writ of error, although the plaintiff produce an affidavit that the defendant is inſolvent, and that the land was mortgaged for more than it was worth. 4 Burr. 2510.

14. If the defendant in ejectment bring a writ of error in parliament the court will oblige him to enter into a rule not to commit *waſte* or deſtruction during the pendency of the writ. 3 Burr. 1823.

15. A writ of error cannot be ſued out in the name of the caſual ejector. 2 Burr. 757.

16. Nothing can be aſſigned for error which will make it neceſſary to go again into the *title* of the land. Hobart, 5.

17. If judgment be given againſt the *caſual ejector*, for want of the real defendant confeſſing *leaſe*, *entry*, and *ouſter*, he cannot bring a writ of error to reverſe a judgment to which he was not a party, and if he bring ſuch writ in the name of the caſual ejector, the caſual ejector being a friend to the plaintiff's leſſor, he may either releaſe the errors, or move the court for a *non pros*, which they will order to be entered. Ld. C. B. Gilbert's Law of Ejectments, p. 23.

XI. *Of the Action for the Meſne Profits.*

1. AN EJECTMENT being a feigned action brought againſt a nominal defendant, and generally on a ſuppoſed ouſter, is obviouſly not a proper action to recover the *meſne profits*, which are wholly dependant on facts done by a real tenant, reſpecting *actual profits* received by him. In the one caſe, therefore, the damages are merely *nominal*, in the other they are ſuch as the plaintiff has ſuſtained by a *real injury*; for the verdict in ejectment having eſtabliſhed the right of the plaintiff from the time that his title accrued, the defendant is a *treſpaſſer*, and the plaintiff entitled to recover from him *damages*, for his unjuſt poſſeſſion, equal to the value of the lands during that time. Runington on Ejec. 164.

2. An action for the *meſne profits*, therefore, is conſequent to the recovery in ejectment; and it is an action of *treſpaſs vi et armis* brought by the leſſor of the plaintiff, in his own name or in the name of the nominal leſſee, (for it may be brought in either ſhape) againſt the tenant in poſſeſſion, to recover the value of profits unjuſtly received by the latter, in conſequence of the *ouſter* complained of in the *ejectment*. 2 Burr. 668.

It

It is usually brought by the lessor of the plaintiff in his own name; and in that case on proving a good title in himself, and an actual ouster and perception of the profits by the defendant antecedent to *the demise* and *ouster* in ejectment, he will recover damages for those profits: but they are seldom an object of litigation, as *the demise* and *ouster* in ejectment are generally laid soon after the time, when the lessor's title accrued.

Dacosta *v.* Alkin, Hilary Term, 4 Geo. 2.

3. If the action be brought in the name of the *nominal lessee*, for it is now settled that there is no distinction between a judgment in ejectment upon *a verdict*, and a judgment *by default*, the court, upon application, will stay the suit till security be given for answering the *costs*; but they will not permit such nominal plaintiff to release the action, and therefore his release has been set aside, as a contempt of court.

Skin. 247. Salk. 260. 2 Burr. 665. Bull. N. P. 89.

4. The plaintiff is not bound to claim the *mesne profits*, only from the time of the demise, but if he go, as he may, for profits received antecedent to the demise laid, the defendant is at liberty to *controvert his title*, which otherwise he cannot do, *the record* against him of the recovery in ejectment being conclusive evidence of the plaintiff's title from that time, and cannot be controverted; in such case it is sufficient to produce the judgment in ejectment and the writ of possession executed.

Bull. N. P. 87. 2 Burr. 667. 1 Sid. 239. 2 Espinasse's Dig. 222.

5. The plaintiff also in an action for *mesne profits* against a *precedent occupier*, must shew and prove his title; for the recovery in ejectment is no evidence as against *him*, he being a stranger to the record; and therefore in this case the plaintiff will be entitled to recover the *mesne profits*, only from the time he can prove himself to have been in *actual possession*; so that if a man make his will and die, the devisee will not be entitled to the profits till he has made an *actual entry*; but it is said that when the plaintiff has once made an actual entry, that it will have relation to the time of his title accrued, and enable him to recover the *mesne profits* from that time: against this retrospective relation, however the defendant may plead the statute of *limitations*, and so protect himself from all the *mesne profits*, except for the last *six years*.

Stanynought, *v.* Cofins 2 Barnes, 367.

2 Espinasse's Digest of action, p. 223.

Buller, N. P. 89.

6. A *tenant in common*, who has recovered in ejectment against his co-tenant in common may maintain an action of trespass for the *mesne profits*.

Goodtitle, *v.* Coombs, 3 Wilf. 118, against the opinion of *Littleton* and *Ld. Coke*. Co. Lit. 199.

7. The

7. The defendant cannot *pay money into court* in an action for *meſne profits* after a recovery in ejectment by default againſt the *caſual ejector*; for the action is for a *tortious occupation* from the time the tenant had notice of the title of the leſſor of the plaintiff; and where the action is brought under theſe circumſtances it is uſual for the plaintiff to declare for, and recover the *coſts* in ejectment, as conſequential damages, as well as the *meſne profits*. 2 Wilſ. 115. Bul. N. P. 88.

8. If the defendant bring a writ of error on the verdict againſt him in ejectment, and enter into a recogniſance purſuant to the ſtatute 16 & 17 *Car.* 2. *c.* 8. to pay coſts, the plaintiff, on judgment in his favour on the writ of error, need not bring a *ſcire facias* or action of *debt* on the recogniſance, but may ſue out an *elegit* or *writ of enquiry*, to recover the *meſne profits* ſince the firſt judgment in ejectment. Short *v.* Heath. Mich. Term, 12 Geo. 2. Cromp. Prac. 223.

9. The declaration in this action for *meſne profits*, muſt expreſsly ſtate the ſeveral parcels of land, &c. from which the profits aroſe, or the defendant may plead THE COMMON BAR. 2 Cromp. Pract. 223.

10. In this action nothing but the judgment in ejectment and execution thereon, and the value of the *meſne profits* can be given in evidence, and not *the title*, for otherwiſe trials would be infinite; but where the judgment is againſt the *tenant in poſſeſſion*, and the action is brought againſt *him*, it ſeems ſufficient to produce an official copy of the judgment without proving the writ of execution executed, becauſe by entering into the rule to confeſs the defendant is ſtopped, both as to the leſſor and leſſee: ſo that either may maintain the action without proving *actual entry*. But where the judgment is againſt the *caſual ejector*, and ſo no rule entered into, the leſſor ſhall not maintain treſpaſs without an actual entry, and therefore ought to prove the writ of poſſeſſion executed. 2 Cromp. Pract. 223. Thap *v.* Fry, Strange 5. Bull. N. P. 87. 2 Eſpinaſſe's Dig. 223. 2 Crompton's Practice, 222. Impey's Inſtructor Clericalis, 4th Edit. 504.

11. The jury in eſtimating the value of the *meſne profits*, are not confined to the mere *rent* of the premiſſes; but may give whatever damages they think proper, unleſs the ſtatute of limitations be pleaded and then they cannot look beyond the laſt ſix years. 3 Wilſ. 121. 2 Burr. 267. Buller's Niſi Prius, 88. Impey's Inſt. Cler. 504.

XII. *Of Second Ejectment.*

1. THE plaintiff may bring a ſecond ejectment for the ſame lands, but unleſs it appear to the court that there is good Salk. 255. 1 Stra. 554, 681. 2 Black. Rep. 1180, 1704. 2 Stra. 1152. Onſlow's N. P. 104.

good ground for it, they will ſtay proceedings until the coſts of the firſt are paid.

2. The court of chancery will not grant a bill of peace to prevent any number of ejectments, for every termor may have an ejectment; and every ejectment ſuppoſes a new demiſe, and the coſts in ejectment are a recompence for the trouble and expence to which the poſſeſſor is put; ſo that by this action a man may try his title to an eſtate as often as he pleaſes.

XIII. *Practice and Precedents.*

HOLDFAST *on the Demiſe of* A. B. *againſt* LETGOE.

K. B.

Affidavit of the ſervice of a declaration in ejectment.

To be engroſſed on treble penny ſheet of paper.

1. *B. R.* of, *&c.* gentleman, maketh oath that he this deponent did on the day of laſt ſerve *C. D.* the tenant in poſſeſſion of the premiſes in queſtion in this cauſe with the declaration hereunto annexed, and the notice there under written, by delivering unto him the ſaid *C. D.* a true copy of the ſaid declaration and notice, and at the ſame time reading over to him the ſaid notice, and acquainting him with the contents or purport of the ſaid declaration and notice.

SWORN, *&c.* *B. R.*

Judgment againſt caſual ejector.

2. On the ground of this *affidavit*, the plaintiff moves for a rule for judgment againſt the *caſual ejector*, which is granted, and judgment goes in conſequence, unleſs the real defendant in due time appear and enters into the common rule.

Notice to the tenant.

3. The notice at the bottom of the declaration, if the premiſes lie in *London* or *Middleſex*, muſt be made to appear the *firſt* day of the *ſubſequent term*, and muſt be delivered before the *eſſoign* day of ſuch term, for if made *generally*, the defendant will have the whole term to appear in.

4. If the premiſes in queſtion be in any other *city* or *county* than *London* or *Middleſex*, you make your notice to appear the next term *generally*.

When the premiſes lie in any other county.

5. If premiſes lie in any other city or county than *London* or *Middleſex*, though the declaration be delivered before the *eſſoign* day of *Eaſter* or *Michaelmas* term, yet the tenant has *four days* after the end of the next iſſuable terms, *viz. Hilary* and

and *Trinity*, when to appear, and if a county where the *aſſizes* are kept once a year, the tenant has *four days* after the end of the term next preceding the *aſſizes* to appear.

Directions for filling up a declaration in ejectment.

6. As a declaration is uſually delivered in the *vacation* to appear in the ſubſequent term, the title muſt be of the preceding term. The demiſe may be laid any day after the title accrues, and before the declaration is delivered, except a *Sunday*. NOTE: The notice to appear muſt be on the *firſt* day of the *ſubſequent term*.

Michaelmas Term, 31 *Geo.* 3.

The form of a declaration by bill.

Treble penny ſtamp.

7. *Middleſex*, } *A. B.* complains of *C. D.* being in the
to wit. } cuſtody of the marſhal of the *Marſhalſea*
of our ſovereign *Lord* the king, before the king himſelf, for that WHEREAS *E. T.* on the day of , in the year of the reign of our ſovereign lord *George* the Third, by the grace of God, king of *Great Britain*, and ſo forth, at *Weſtminſter*, in the county of *Middleſex*, had demiſed, granted, and to farm let to the ſaid *A.* meſſuages, *&c.* with the appurtenances, ſituate, lying, and being in the pariſh of *St. Clement Danes*, in the ſaid county of *Middleſex*. TO HAVE AND TO HOLD the ſaid tenements, with the appurtenances to the ſaid *A. B.* and his aſſigns, from the day of , then laſt paſt, to the full end and term of years from thence next enſuing, and fully to be complete and ended: *By* virtue of which ſaid demiſe, he the ſaid *A.* entered into the ſaid tenements with the appurtenances, and was thereof poſſeſſed until the ſaid *C.* afterwards, (*that is to ſay*) on the ſame day of , in the year aforeſaid, with force and arms entered into the ſaid tenements, with the appurtenances, in and upon the poſſeſſion of the ſaid *A.* and ejected, drove out, and removed the ſaid *A.* from his ſaid farm, during his ſaid term not yet expired, (*and the ſaid* A. *being ſo ejected, drove out, and removed*) the ſaid *C.* hitherto hath withheld from him, and ſtill doth withhold the poſſeſſion thereof, and then and there did other injuries unto him againſt the peace of our ſaid ſovereign lord the king, and to the damage of the ſaid *A.* 30*l.* and therefore he brings his ſuit, *&c.*

Michaelmas

Michaelmas Term, 31 *Geo.* 3.

The form of a declaration by original. Treble penny ſtamp.

8. *Middleſex*, } *A. B.* late of the pariſh of *St. Clement*
to wit, } *Danes*, in the county aforeſaid, taylor, was attached to anſwer *C. D.* in an action, wherefore he the ſaid *A. B.* entered into one meſſuage and one garden, with the appurtenances, ſituate, lying, and being in the ſaid pariſh of *St. Clement Danes*, in the county aforeſaid, which one *E. T.* demiſed to the ſaid *C.* for a term which is not yet expired, and ejected him from his ſaid farm, and did other wrongs to him, to the great damage of the ſaid *C.* and againſt the peace of our ſovereign lord the king: and whereupon the ſaid *C.* by *R. R.* his attorney complains, That whereas the ſaid *E. T.* on the day of , in the year of the reign of his preſent majeſty, at *Weſtminſter*, in the county aforeſaid, had demiſed to the ſaid *C.* the ſaid tenements, with the appurtenances, to him the ſaid *C.* and his aſſigns. TO HAVE AND TO HOLD the ſaid tenements, with the appurtenances, from the day of , then laſt paſt, to the full end and term of years then next following, and fully to be complete and ended: *By* virtue of which ſaid demiſe, the ſaid *C.* entered into the ſaid tenements, with the appurtenances, and was poſſeſſed thereof; and being ſo poſſeſſed thereof, the ſaid *A.* afterwards (*that is to ſay*) on the ſame day of , in the ſaid year aforeſaid, with force and arms entered into the ſaid tenements, with the appurtenances, which the ſaid *E. T.* demiſed to the ſaid *C.* in manner aforeſaid, for a term which is not yet expired, and ejected the ſaid *C.* out of his ſaid farm; and did him other wrongs, to the great damage of the ſaid *C.* and againſt the peace of our ſaid ſovereign lord the king, whereby the ſaid *C.* ſays that he is injured, and hath damage to the value of 30 *l.* and therefore he brings his ſuit, *&c.*

To Mr. I. F. *the Tenant in Poſſeſſion.*

A notice to a tenant in poſſeſſion to be inſerted at the bottom of theſe declarations.

9. I AM informed that you are in poſſeſſion, or claim title to the premiſes mentioned in this declaration of *ejectment*, or to ſome part thereof, and I being ſued in this action as the caſual ejector, and having no claim or title to the ſame, do adviſe you to appear the *firſt* day of *Michaelmas* term next, in

in his majesty's court of *King's Bench*, at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

I am, your loving friend,

June—1791. *Richard Letgoe.*

10. NOTE: You may buy printed copies of these declarations on treble penny stamped paper, at any of the law stationers; they are indorsed for delivery in the same manner as another declaration.

11. Notice of ejectment must be both fair and honest, and truly and honestly explained to the tenant in possession. Loffi's Rep. 53.

12. The notice must be to appear in the term next to that of which the declaration is entitled. Say. Rep. 49.

13. The court will not set aside the proceedings for irregularity, because the notice at the foot of the declaration is subscribed in the name of the *nominal plaintiff*, instead of the casual ejector. 3 Term Rep. 351.

14. As you must bring separate actions for as many different premises as there are tenants, each declaration to deliver must be on treble penny, agreeable to the copy thereof you keep by you, on treble penny, in order to make an affidavit of the service of the same, to obtain a rule for judgment. Say. Rep. 151.

15. IF the premises are in *London* or *Middlesex*, and the notice in the declaration is to appear the *first* day of term, or within the *first four days* of the term, you may move any time within the *first four days*, and then the tenant has but *four days inclusive* to appear after motion; if moved late in the term, the tenant has *two* or *three days* to appear, but if not moved before the *four last days* of term, he has until *two days* before the *essoign day* of the *subsequent term*. If the notice on the declaration is to appear *generally* the tenant has the whole term to appear in. Tenant in possession cannot appear, after time allowed for appearance by the common rule, is expired. When the tenant is to appear.

16. WHEN you move for a rule for judgment, you annex the *affidavit* to a copy of the service of the declaration on *treble penny stamp*, and give it to counsel with 10*s.* 6*d.* to move How to move for a rule for judgment.

move the ſame. It is a motion of courſe. The clerk of the rules files the affidavit and declaration on motion for a rule for judgment, ſo that you muſt take care to have another copy on ſtamp to keep by you; or if judgment ſhould go againſt the caſual ejector for want of the tenant's entering into a rule, you will be forced to have an office-copy of the declaration from the clerk of the rules to enable you to ſign judgment.

THURSDAY next after, &c.

Rule for judgment againſt the caſual ejector.

17. *A.* on a demiſe of *F.* againſt *C.* UNLESS the tenant in poſſeſſion of the premiſes in queſtion ſhall appear and plead to iſſue on *Tueſday next after, &c.* (*time tenant is to appear in*) LET judgment be entered for the plaintiff againſt the now defendant *C.* by default upon the motion of Mr. *D*—— BY THE COURT.

18.—NOTE. If plaintiff does not move for judgment the ſame term tenant had notice to appear, the court will not grant ſuch rule.

Salk. 257.

19. The rule for judgment muſt be drawn up and taken from the officer of the clerk of the rules within two days after the end of the term in which the ejectment ſhall be moved, or elſe no rule ſhall be drawn up or entered in the book, nor ſhall any proceedings be had in ſuch ejectment.

Michaelmas Term in the 31ſt Year of the Reign of King *George* the Third.

A rule by conſent entered into by the plaintiff and defendant,

20. IT IS ORDERED, by the conſent of the attornies of both parties, that *I. F.* be made defendant in the ſtead of the now defendant *C. D.* and do appear forthwith at the ſuit of the plaintiff, and file common bail, and receive a declaration in an action of *treſpaſs and ejectment* for the premiſes in queſtion in this cauſe, and forthwith plead thereto *Not guilty*; and, upon the trial of the iſſue, confeſs leaſe, entry, and ouſter, and inſiſt upon the title only, otherwiſe let judgment be entered for the plaintiff againſt the now defendant *C. D.* by default; and if upon the trial of the iſſue

iſſue the ſaid *I. F.* ſhall not confeſs leaſe, entry, and ouſter, whereby the plaintiff ſhall not be able further to proſecute his bill againſt *I. F.* then no coſts ſhall be allowed for not further proſecuting the ſame; but the ſaid *I. F.* ſhall pay coſts to the plaintiff in that caſe to be taxed. AND IT IS FURTHER ORDERED, That if upon the trial of the ſaid iſſue a verdict ſhall be given for the ſaid *I. F.* or it ſhall happen that the plaintiff ſhall not further proſecute his ſaid bill or any other cauſe than for not confeſſing leaſe, entry, and ouſter, then the leſſor of the plaintiff ſhall pay to the ſaid *I. F.* his coſts in that behalf to be adjudged.

BY THE COURT.

R. R. for the leſſor of the plaintiff,
P. P. for the defendant.

How the defendant muſt appear and plead to an action in ejectment by bill.

21. GET a blank conſent rule at a law-ſtationer's; they are not ſtamped; fill it up, and make the tenant, inſtead of the nominal defendant, the defendant therein. Write in the *margin* of ſuch rule the premiſes mentioned in the declaration. It muſt be ſigned at bottom with the tenant's attorney's name, leaving room for the plaintiff's attorney's name over it. Ingroſs the plea of the *general iſſue*, "*Not guilty*," with the defendant's name, on a treble penny piece of ſtamped paper, and annex the ſame to the back of the rule, and leave it at one of the judge's chambers of the court where the action is brought; pay the judge's clerk in *term* 1*s.* in *vacation* 2*s.*

By original.

22. BY original, you muſt in the conſent-rule ſtrike out the words "*and file common bail*" and inſtead of "*his bill therein*" inſert "*his writ*" and inſtead of filing common bail, you muſt enter an appearance with the *filacer*.

Regula Generalis Trinity Term, 15 Car. 2.

23. IF the defendant enters into the common rule to confeſs, *&c.* for ſo much of the tenements as are in his poſſeſſion, the defendant's attorney muſt forthwith give the plaintiff's attorney notice in writing of the tenements ſo in his poſſeſſion.

A notice of the premiſes the defendant defends for.

A. on the demiſe of *F.* againſt *C.*

K. B.

SIR,

24. TAKE notice that I defend title for a meſſuage and garden, with the appurtenances, ſituate in the pariſh of *St. Clement*

Clement Danes, in the county of *Middlesex*, now in possession of the said *I. F.* or his under-tenant. DATED the day of , 1791.

To Mr. *R. R.*
the plaintiff's attorney,
These,

Your's, &c.
P. P.
defendant's attorney.

How to defend when not in possession.

25. NOTE, If a person claim *title* to premises which he would defend, and is not in *possession* of the same, he must move the court, on affidavit of the fact, to be made defendant instead of the nominal defendant. This must be with the consent of the tenant in possession, unless such person is landlord thereof.

Steps to be taken by the plaintiff's attorney to draw up the consent-rule in order to come to issue.

26. WHEN the rule for judgment is out, you search at the *four* judge's chambers of the court, in which the cause is brought to see if the defendant has pleaded. If he has pleaded, you take away your rule and plea; sign your name as plaintiff's attorney at the bottom of the rule; carry the same to the clerk of the rules, who keeps the rule, and draws you up another consent-rule; pay him for the same 6 *s.* This rule you make a copy of, and annex such copy to the issue when you deliver the same to the defendant's attorney.

Plea of not Guilty.

27. "AND the said *I. F.* by *P. P.* his attorney, comes "and defends the force and injury, when, &c. and says "that he is not guilty of the *trespass* and *ejectment* aforesaid, "as the said *John Holdfast* above complains against him, "and of this he puts himself on the country."

An issue and record in ejectment by bill or original.

28. THE issue and record in *ejectment*, when the proceedings are by *bill* or *original*, are the same as in a common action *mutatis mutandis*, only using a written form instead of the common printed form for the issue in both cases.

How to sign judgment against the casual ejector for want of a plea.

29. SEARCH at all the judge's chambers of the court the action is brought in to see if the tenant has left a plea and rule in the cause; if there is none left, draw up a rule for judgment with the clerk of the rules; pay for the same 5 *s.* Make *incipitur* of the declaration on a sheet of *double* 2 *s.* 6 *d. stamped paper*, and also on a *K. B.* roll; carry them with the declaration and rule to the clerk of the judgments, who signs the judgment; pay for the same 3 *s.* 6 *d.* this done you make out your *writ of possession*.

Sayer's Rep. 303.

30. THIS judgment cannot be signed until the afternoon of the fifth day after the end of the term, of which the declaration is intitled.

31. BUT

31. BUT by an order in *Michaelmas* Term, 31 *Geo.* 3. unleſs the rule for judgment ſhall be drawn up and taken away from the office of the clerk of the rules *within two days* after the end of the term in which the ejectment ſhall be moved, no rule ſhall be drawn up or entred in the THE BOOK, (*a*) nor ſhall any proceedings be had in ſuch ejectment.

Regula Generalis Mich. Term 31 Geo. 3.

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32. AND the ſaid *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, *&c.* and ſays nothing in bar or preclusion of the aforeſaid action of the ſaid *John Holdfaſt*, but made default, whereby the ſaid *John Holdfaſt* remains therein undefended, *&c.* THEREFORE it is conſidered that the ſaid *John Holdfaſt* do recover againſt the ſaid *E. F.* his term aforeſaid yet to come of and in the ſaid tenements, with the appurtenances; AND ALSO his damages by occaſion of the *treſpaſs* and *ejectment* aforeſaid: and thereupon the ſaid *John Holdfaſt* freely here in court remits to the ſaid *E. F.* as well all ſuch damages, coſts, and charges as may be adjudged to the ſaid *John Holdfaſt* in this behalf, as all judgments and executions for the ſaid damages, coſts and charges: THEREFORE let the ſaid *E. F.* be acquitted of the ſaid damages, coſts and charges, and the ſaid *John Holdfaſt* prays the writ of our ſaid lord the king to be directed to the ſheriff of the county of *Middleſex*, to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and it is granted to him returnable before our lord the king at *Weſtminſter*, on (*the return you make your writ of poſſeſſion of*) the ſame day is given to the ſaid *John Holdfaſt* here, *&c.*

The form of a POSTEA on a verdict for the plaintiff againſt the caſual ejector for not confeſſing leaſe, entry, and ouſter.

33. NOTE. The above *poſtea* is not ſtamped; it is entered with the clerk of the *poſteas*; pay for entering the ſame 6 *d.* You give a rule for judgment thereon as in a common caſe; when out you tax coſts with the maſter on the conſent-rule; make copy thereof, and ſerve on the defendant, and demand the coſts taxed; if he refuſe payment on affidavit and motion, the court will grant an attachment for his contempt,

In what manner the plaintiff ſhall recover his *coſts*.

(*a*) The clerk of the rules ſhall keep a book, in which ſhall be entered all the rules, which, from time to time, ſhall be delivered out in ejectments, containing a liſt of the ejectments moved; in which book ſhall be mentioned the number of the entry, the county in which the premiſes lie, the names of the nominal plaintiff (with the words "and others," if there be more than one,) and alſo the name of the caſual ejector, *Rule Mich.* 31 *Geo.* 3, 4. *Term Rep.* 1.

which cannot be purged till he hath paid the coſts. If the defendant keeps out of the way, to prevent your ſerving the rule and demanding the coſts; on *affidavit* and motion, the court will make an order, that ſervice and a demand on ſome perſon in the houſe or place where the defendant reſides, ſhall be ſufficient; and if not complied with on an affidavit of the fact and motion, the court will grant an *attachment* againſt the defendant.

The mode for the defendant to recover his *coſts* on a verdict in his favour, or plaintiff being non-ſuited.

34. If a verdict is given for the defendant, or the plaintiff is nonſuited for any other cauſe than the defendant's not confeſſing, &c. the defendant muſt get *poſtea* ſtamped, and tax coſts thereon as in another action. He muſt ſue out a *ca. ſa.* againſt the plaintiff, and on ſhewing the writ under ſeal to the plaintiff's leſſor, and ſerving him with a copy of the conſent-rule, and demanding the coſts; if he does not pay the ſame, the court on motion will grant an attachment againſt him.

The form of a judgment in ejectment by *non ſum informatus.*

35. And the ſaid *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, &c. and upon this the ſaid *John Holdfaſt* prays that the ſaid *E. F.* may anſwer his ſaid declaration; upon which the ſaid attorney of the ſaid *E. F.* ſays, that he is not informed by the ſaid *E. F.* of any anſwer to be given by the ſaid *E. F.* to the ſaid *John Holdfaſt* in the ſaid plaint; and he ſays not any thing elſe thereupon in *bar* or *preclusion* of the ſaid action of the ſaid *John Holdfaſt*, by which the ſaid *John Holdfaſt* remains undefended upon that occaſion againſt the ſaid *E. F.* for which it is conſidered, that the ſaid *John Holdfaſt* recover againſt the ſaid *E. F.* the poſſeſſion of his ſaid term yet to come of and in the ſaid tenement, with the appurtenances, and his damages by occaſion of the ſaid *treſpaſs* and *ejectment*, *it is commanded* to the ſheriff, that, by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the ſaid *John Holdfaſt* has ſuſtained, as well by occaſion of the ſaid *treſpaſs* and *ejectment*, as for his coſts and charges by him about this ſuit expended; and that the inquiſition which, &c. the ſheriff do make appear to our lord the, &c. on *(the return of inquiry)* under his ſeal, &c. and the ſeals, &c. The ſame day is given to the ſaid *John Holdfaſt*, &c. and upon this the ſaid *John Holdfaſt* prays the writ of our lord the king to be directed

directed to the ſheriff of the county aforeſaid, to cauſe him to have poſſeſſion of the ſaid term yet to come of and in the ſaid tenements, with the appurtenances; and it is granted to him returnable before our lord the king at *Weſtminſter*, on *(the return of the writ of poſſeſſion.)*

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36. MIDDLESEX, to wit, *C. D.* late of *London*, taylor, was attached to anſwer to *A. B.* of a plea, wherefore with force and arms he broke and entered into five meſſuages, with the appurtenances, at *Weſtminſter*, in the county aforeſaid, and drove out and removed the ſaid *A. B.* from the poſſeſſion and occupation of the ſame tenements, and for a long time withheld the ſaid *A. B.* from the poſſeſſion and occupation of the ſame *(he being ſo driven out and removed therefrom as above-ſaid;)* and the ſaid *C. D.* during all the time aforeſaid, had and received to his own proper uſe, all the iſſues and profits of the ſaid tenements of the yearly value of 100 *l.* and did other injuries to the ſaid *A. B.* to the great damage of the ſaid *A. B.* and againſt the peace of our ſovereign lord the king, *&c.* And whereupon the ſaid *A. B.* by *R. R.* his attorney, complains that the ſaid *C. D.* on the day of , in the year of the reign of his ſaid preſent majeſty, with force and arms broke and entered into the ſaid five meſſuages, with the appurtenances, at *Weſtminſter*, in the county aforeſaid, and drove out and removed the ſaid *A. B.* from the poſſeſſion and occupation of the ſaid tenements, and for a long time *(that is to ſay, from the day of , in the year aforeſaid, until the day of ſuing out the original writ of the ſaid* A. B. *withheld the poſſeſſion and occupation of the ſaid tenements from the ſaid* A. B. *he being ſo driven out and removed as aboveſaid)* and alſo the ſaid *C. D.* had and received to his own uſe, all the iſſues and profits of the ſaid tenements, of the yearly value of 100 *l.* during all the time aforeſaid, and did other injuries to the ſaid *A. B.* to his great damage, and againſt the peace of our ſaid ſovereign lord the king, *&c.* wherefore he ſays, he is injured, and hath damage to the value of 200 *l.* and therefore he brings his ſuit, *&c.*

The form of a declaration by *original* in ejectment for the *meſne profits.*

To be engroſſed on a treble penny ſtamped ſheet of paper.

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37. AND the ſaid *C. D.* by *P. P.* his attorney, comes and defends the force and injury, when, &c. and craves oyer

A plea in *abatement*, that there is no ſuch writ. Treble penny ſtamp.

oyer of the ſaid writ, and it is read to him in theſe words, *to wit*, GEORGE the Third, *&c.* TO the ſheriff of *Middleſex*, *greeting:* If *A. C.* ſhall give you ſecurity that his ſuit ſhall be proſecuted, then put *C. D.* late of *London*, taylor, by ſureties and ſafe pledges, that he be before us on (*the return*) whereſoever, *&c.* to ſhew wherefore with, *&c.* (*as in the declaration to the end*) and have you there the names of the pledges, and this writ. WITNESS ourſelf at *Weſtminſter*, the day of in the year of our reign: Which being read and heard, the ſaid *C. D.* prays judgment of the ſaid writ; becauſe he ſays that there is not any ſuch form of a writ in an action of *treſpaſs* and *ejectment* in the regiſter of writs as the form aforeſaid; and that the ſaid writ varies from the ſaid regiſter of writs in this reſpect, inaſmuch as it does not appear by the ſaid writ, that the meſſuages therein mentioned were the meſſuages of the ſaid *A. B.*; and this he is ready to verify; wherefore he prays judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.*

The form of a *writ of poſſeſſion* by bill in ejectment.

Five ſixpenny ſtamps.

38. GEORGE the Third, *&c.* TO the ſheriff of *Middleſex*, *greeting:* WHEREAS *A. B.* lately in our court before us at *Weſtminſter*, by bill, without our writ, and by the judgment of the ſame court, recovered againſt *C. D.* his term yet to come, of and in one meſſuage, with the appurtenances, ſituate, lying, and being at *Weſtminſter*, in the county aforeſaid, which *I. F.* on the day of in the year of our reign, demiſed to the ſaid *A. B.* for a term of years not yet expired, *to wit*, on the day of then laſt paſt, to the full end and term of five years from thence next enſuing, and fully to be complete and ended, by virtue of which demiſe the ſame *A. B.* entered upon the ſame tenements, with the appurtenances, and was thereof poſſeſſed until the ſaid *C. D.* afterwards, to wit, on the ſame day of , in the year aforeſaid, with force and arms, entered into the ſaid tenements, with the appurtenances, and him the ſaid *A. B.* from his farm aforeſaid, the ſaid term then and there not being expired, ejected, drove out, and removed, and him the ſaid *A. B.* hath withheld from his poſſeſſion thereof, and ſtill doth withhold, whereof the ſaid *C. D.* is convicted, as appears to us upon record: THEREFORE we command you, that, without delay, you cauſe the ſaid *A. B.* to have his poſ-

poſſeſſion of his term aforeſaid yet to come, of and in the tenements aforeſaid, with the appurtenances, and in what manner you ſhall have executed this our writ, make appear to us at *Weſtminſter*, on *(the return of the writ of poſſeſſion)*: And have there then this writ. WITNESS *Lloyd* LORD *Kenyon*, at *Weſtminſter*, &c.

39. NOTE: This writ muſt be ingroſſed on parchment. Make *a precipe* for the office thus.

40. MIDDLESEX, *to wit*, Writ of poſſeſſion for *A. B.* on the demiſe of *F.* againſt *C. D.* for a meſſuage, with the appurtenances, ſituate at *Weſtminſter*, in the county of *Middleſex*. *A precipe for the office.*

Returnable *(the return)*.

R. R. attorney.

41. NOTE: Carry *the writ* and *precipe* to the officer who ſigns the writs in this court; pay him for ſigning the ſame 1*s.* 8*d.* ſealing at the ſeal office 7*d.* the ſheriff's warrant thereon 2*s.* 4*d.* his fees for executing the ſame is 1*s.* in the pound, in the yearly value of the premiſſes, if the ſame does not exceed 100*l. per annum*, and 6*d.* in the pound for every 20*s.* above, and 2*s.* returning the writ. Officer's fee executing writ uſually 1*l.* 1*s.*

42. IF the proceedings are by *original*, the writ of poſſeſſion differs only from the above in the introductory part, and in the return. It is ſigned by the filacer, and ſealed as the above writ.

B. R.

A. B.
againſt
C. D.

43. *A. B.* of &c. the plaintiff in this cauſe maketh oath, that the above defendant juſtly owes to him this deponent the ſum of pounds for a year's rent *(or as the caſe is)* of one meſſuage, &c. now in the poſſeſſion of the ſaid defendant as tenant thereof *(or as the caſe is)* due to this deponent at *(the time when due)* and that no ſufficient diſtreſs can be had or found on the premiſſes to ſatisfy the ſaid rent: *And further* that he this deponent has a right and power by

An affidavit of rent in arrear from the tenant, where there is no diſtreſs in order to recover in ejectment. This affidavit to be engroſſed on a treble ſixpenny ſtamped ſheet of paper.

by law to re-enter on the ſaid meſſuage, *&c.* on non-payment of the rent aforeſaid.

SWORN, *&c.* *A. B.*

G. Leſſee of J. B. *againſt* N. N.

An affidavit of a tenant's refuſing to defend an ejectment in order to have the landlord admitted defendant.

And ſo muſt this affidavit.

44. *J. D. &c.* maketh oath, That he this deponent did this day of , by the direction of *N. B.* landlord of the premiſſes in queſtion in this cauſe, apply to *G. B.* tenant in poſſeſſion of the ſaid premiſſes, to know whether he the ſaid *G. B.* would appear and become defendant in his cauſe, or would permit the ſaid *N. B.* to defend his title to the premiſſes in the name of the ſaid *G. B.* And this deponent at the ſame time ſhewed and offered to deliver unto the ſaid *G. B.* a note underſigned by the ſaid *N. B.* whereby the ſaid *N. B.* promiſed to defend and keep the ſaid *G. B.* harmleſs, from all coſts and charges in this cauſe, but the ſaid *G. B.* then told this deponent that he would not appear and become defendant in this cauſe or any-wiſe concern himſelf therein.

SWORN, *&c.* *J. D.*

45. BILL OF COSTS *for the Leſſor of the Plaintiff, when the Proceedings are by Bill, upon Judgment being ſuffered to be entered by Default.*

King's Bench.

THRUSTOUT on the demiſe of WESTBROOKE, Spinſter, againſt HOLDFAST.

Michaelmas Term, 1791.

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Inſtructions and warrant to ſue -	0	2	7	0	2	7	0	4	4
Peruſing title deeds, and taking abſtracts from the parcels - -	0	0	0	0	3	4	0	6	8
Drawing declaration with notice, folio 8. - - -	0	0	0	0	4	0	0	8	●
Engroſſing ſame on ſtamp to ſerve and duty - - -	0	0	3	0	1	7	0	2	11
Service on tenant - -	0	0	0	0	2	6	0	5	0
Affidavit thereof, duty and oath -	0	2	7	0	4	1	0	5	7
Copy of declaration to anſwer to affidavit, and duty - - -	0	0	3	0	1	7	0	2	11
Copy for uſe - -	0	0	0	0	1	0	0	2	0
Letters and porters - - -	0	0	0	0	2	0	0	4	●

Hilary Term, 1791.

Inſtructions to move for judgment -	0	0	0	0	1	3	0	2	6
Fee to counſel therewith - -	0	10	6	0	10	6	0	10	6
Attending him and court - -	0	0	0	0	1	8	0	3	4
Paid for rule - - -	0	6	0	0	6	0	0	6	●
Searching whether tenant had entered into conſent-rule - - -	0	0	0	0	1	8	0	3	4
Drawing judgment - - -	0	0	0	0	1	8	0	3	4
Engroſſing the proceedings and ſtamps, folio 10 - - -	0	5	1	0	6	9	0	8	5
Entring ſame on the roll - -	0	0	6	0	2	2	0	3	10
Warrants and docket - -	0	3	0	0	3	4	0	3	8
Paid maſter ſigning judgment -	0	4	2	0	4	2	0	4	2
Attending to ſign ſame - -	0	0	0	0	1	8	0	3	4
Writ of *hab. fac. poſſ.* - -	0	4	10	0	8	2	0	11	6

Warrant

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Warrant thereon and meſſenger -	0	2	6	0	3	0	0	3	4
Attending ſheriff to take poſſeſſion -	0	0	0	0	3	4	0	6	8
Paid ſheriff (according to value of premiſes, uſually one ſhilling in the pound) - - - - -	0	0	0	0	0	0	0	0	0
Term fee - - - - -	0	0	0	0	2	6	0	5	0
Letters, &c. - - -	0	0	0	0	2	0	0	4	0

46. *Bill of the Leſſor of the Plaintiff's Coſts upon Nonſuit for not confeſſing Leaſe, Entry, and Ouſter.*

King's Bench.

Michaelmas Vacation, 1791.

DOE on the demiſe of WESTBROOKE, Spinſter, againſt CHAPMAN.

N. B. This Bill of Coſts runs the ſame as the preceding one, until

Hilary Term, 1791.

Searching if tenant has entered into conſent-rule, and giving receipt for the ſame - - -	0	0	0	0	1	8	0	3	4
Paid filing ſame with clerk of the rules	0	6	0	0	6	0	0	6	0
Drawing iſſue, folio 10 - -	0	0	0	0	5	0	0	10	0
Entring ſame on the roll and paid -	0	4	2	0	5	10	0	7	6
Notice of trial, copy and ſervice -	0	0	0	0	1	6	0	3	0
N. B. The reſt of the charges for making up the record, and proceeding to trial, as in the bill in replevin, which ſee *ante, p.* 128.									
Attending the trial, when the plaintiff was non-ſuited, in that defendant did not confeſs leaſe, entry, and ouſter	0	0	0	0	6	8	0	13	4
Term fee - - -	0	0	0	0	2	6	0	5	0
Porters, &c. - - -	0	0	0	0	2	0	0	4	0

Drawing

Easter Term, 1791.

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Drawing judgment	0	0	0	0	1	8	0	3	4
Engrossing the proceedings on stamps	0	5	1	0	6	9	0	8	5
Paid for rule	0	6	0	0	6	0	0	6	0
Paid signing judgment	0	4	2	0	4	2	0	4	2
Attending to sign same	0	0	0	0	1	8	0	3	4
Drawing bill of costs and copy	0	0	0	0	2	0	0	4	0
Attending to tax costs	0	0	0	0	1	8	0	3	4
Copy of rule with master's allocatur thereon to serve on defendant	0	0	0	0	1	0	0	2	0
Many attendances at defendant's house, in order to serve him personally	0	0	0	0	6	8	0	13	4
Affidavit of service, engrossing, and duty, on motion for an attachment, and oath in court	0	3	1	0	4	7	0	6	1
Instructions for Mr. GARROW to move	0	0	0	0	1	3	0	2	6
Fee to him therewith	1	1	0	1	1	0	1	1	0
Attending him and court	0	0	0	0	1	8	0	3	4
Paid for rule	0	7	0	0	7	0	0	7	0
Paid for attachment	0	16	0	0	16	0	0	16	0
Warrant and messenger	0	2	6	0	3	0	0	3	6
Fee thereon	0	0	0	0	3	4	0	6	8
Attending officer with instructions	0	0	0	0	1	8	0	3	4
Attending the sheriff's office to get attachment returned, *non est invent.* and paid	0	1	0	0	2	8	0	4	4
Attending crown office to file same	0	0	0	0	1	8	0	3	4
Paid for *Al.* attachment	0	12	0	0	12	0	0	12	0
Warrant and messenger	0	2	6	0	3	0	0	3	6
Fee thereon	0	0	0	0	3	4	0	6	8
Attending offices to instruct him	0	0	0	0	1	8	0	3	4
Paid him his caption fee	1	1	0	1	1	0	1	1	0
Attending to settle and give discharge	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	2	6	0	5	0
Letters, &c.	0	0	0	0	2	0	0	4	0

47. BILL OF COSTS *for the Lessor of the Plaintiff, when the Proceedings are by Original.*

King's Bench,

Easter Term, 1791.

DOE on the Demise of WESTBROORE, Spinster, against ROE.

	Monies out of pocket. £.	s.	d.	Agent. £.	s.	d.	Attorney. £.	s.	d.
Instructions and warrant to sue -	0	2	7	0	2	7	0	4	4
Perusing title deeds, and abstracting parcels - - -	0	0	0	0	3	4	0	6	8
Drawing precipe for original, and copy for cursitor, folio 7 - -	0	0	0	0	3	6	0	7	0
Paid for original and fee - -	0	6	4	0	9	8	0	13	0
Returning and filing - -	0	0	0	0	1	6	0	3	0
Drawing declaration with notice, folio 8 - - - -	0	0	0	0	4	0	0	8	0
N. B. The rest of the charges same as in ejectment by bill, which see *ante p.* 185.									

48. BILL OF COSTS *for the* DEFENDANT.

King's Bench.

Hilary Term, 1791.

Instructions and warrant to defend -	0	2	7	0	2	7	0	4	4
Copying declaration, folio 7 -	0	0	0	0	1	2	0	2	4
Searching if judgment moved for, and paid - - - - -	0	1	0	0	2	8	0	4	4
Entring appearance (if proceedings by original) - - - -	0	2	6	0	4	2	0	5	10
Filing common bail (if proceedings by bill) - - -	0	2	9	0	4	11	0	7	2
Drawing consent rule and fair copy to sign - - - -	0	0	0	0	2	0	0	4	0
Drawing general form, and engrossing with duty - - -	0	0	3	0	1	7	0	2	11

Paid

	Monies out of pocket. £.	s.	d.	Agent. £.	s.	d.	Attorney. £.	s.	d.
Paid filing same	0	2	0	0	2	0	0	2	0
Attending for that purpose	0	0	0	0	1	8	0	3	4
Paid for issue, duty, and entering plea	0	4	7	0	4	7	0	4	7
Copy of issue, folio 10. sent into the country	0	0	0	0	1	8	0	3	4
Copying notice of trial	0	0	0	0	0	6	0	1	0
Term fee	0	0	0	0	2	6	0	5	0
Letters, *&c.*	0	0	0	0	2	0	0	4	0
Instructions and warrant to defend	0	0	0	0	2	7	0	4	4
Fee on filing same	0	0	0	0	1	8	0	3	4
Copy of declaration, fol. 7.	0	0	0	0	1	2	0	2	4
Searching if judgment moved for, and paid	0	1	0	0	2	8	0	4	4
Instructions to counsel to move that landlord might be made defendant with the tenant	0	0	0	0	1	3	0	2	6
Fee to counsel therewith	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Paid for rule	0	8	0	0	8	0	0	8	0
Copy thereof to owner to the consent-rule	0	0	0	0	1	0	0	2	0
Entring appearance	0	2	6	0	4	2	0	5	10
Or									
Filing common bail	0	2	9	0	4	11	0	7	2
For landlord and tenant, both	0	5	3	0	9	1	0	13	0
The rest of the articles of charge, same as in the next above preceding bill of costs,									

49. BILL OF COSTS *for the* DEFENDANT.

Common Pleas,

Hilary Term, 1791.

BARVER at the Suit of FREEMAN.

Instructions and warrant to defend	0	2	7	0	2	7	0	4	4
Copying declaration, fol. 7.	0	0	0	0	1	2	0	2	4

Searching

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Searching if judgment moved for, and paid	0	0	6	0	1	2	0	3	10
Common conſent-rule	0	0	0	0	1	8	0	3	4
General iſſue, engroſſing and duty	0	0	3	0	1	7	0	2	11
Paid filing ſame	0	2	0	0	2	0	0	2	0
Paid for iſſue, fol. 10. duty, and entering plea	0	5	7	0	5	7	0	5	7
Paid half conſent-rule	0	2	6	0	2	6	0	2	6
Copy iſſue	0	0	0	0	1	8	0	3	4
Copying notice of trial	0	0	0	0	0	6	0	1	0
Term fee	0	0	0	0	2	6	0	5	0
Letters, *&c.*	0	0	0	0	2	0	0	4	0

The reſt of the charges for trial as uſual.

INDEX.

ABATEMENT.

1. OF pleading in abatement *Page* 113
2. Form of plea in abatement, in ejectment 181, 182

AGREEMENTS.

1. For taking an appartment 31
2. For taking a houſe 33, 34
3. For leaſe of garden ground 34
4. For purchaſe of a houſe 35
5. For building a houſe 36
6. For letting a ready furniſhed lodging *ib.*

ALLODIAL LANDS.

1. The meaning of this ſpecies of tenure 2

APARTMENT—*Agreements.*

APPRAISER.

1. The manner in which goods muſt be appraiſed under a diſtreſs 91, 101

ASSIGNMENTS.

1. Abſolute aſſignment of leaſes, &c. 49
2. Diſtinction between an *aſſignment* and an *underleaſe* 27

ATTORNMENT.

1. The nature, and how altered 22

AVOWRY.—*Replevin.*

1. AVOWRY is in the nature of a *bar*, and imports a *juſtification* 113
2. Of avowry made upon a diſtreſs for rent or ſervice *Page* 114
3. By 11 *Geo.* 2. *c.* 19. landlords may avow generally in replevin on a diſtreſs for rent 115
4. Attornment need not be avowed in an avowry 116

BAILIFF—*Diſtreſs.*

BILL of SALE.

1. An abſolute bill of ſale 55
2. Bill of ſale of a trader's effects *ib.*

BOND.

1. Of the replevin bond 106, 107

CONSENT RULE—*Ejectment.*

COPARCENERS—*Eſtates.*

1. Of the nature of an eſtate in coparcenary by the common law 8
2. Of parceners by cuſtom 9

COPYHOLD—*Eſtates.*

COURTESEY.

1. An eſtate by the courteſey of *England* deſcribed 4

COSTS.

1. Coſts in replevin 118, 131
2. Coſts in ejectment 164, 185
3. Bill of coſts for regiſtering judgment in *Middleſex* 59
4. Bill of coſts for plaintiff in replevin 129

5. Bills of coſts for *plaintiff* and *defendant* in ejectment *Page* 184

COVENANTS—*Leaſes.*

1. An *exception* may be a covenant 23
2. A covenant not to aſſign, does not extend to an underleaſe 27
3. A covenant of renewal 28
4. Covenants to lie reſerved under a power 29
5. Covenants for repairs 30

CUSTOM.

1. Eſtates by cuſtom 9
2. Deſcents by cuſtom 17

DECLARATION.

1. In replevin 112
2. In ejectment 181

DEEDS.

1. The law relating to *purchaſes* by deeds 18
2. The form of a deed poll 47
3. A deed of aſſignment 49

DESCENT.

1. Deſcent or hereditary ſucceſſion, is the title whereby a man, on the death of his anceſtor, requires his eſtate by right of repreſentation, as his heir at law 11
2. Deſcent is either *lineal* or *collateral* 12
3. Inheritance ſhall lineally *deſcend* to the iſſue of the perſon laſt actually ſeiſed *in infinitum*, but ſhall never lineally aſcend 12
4. When there are two or more males, in equal degree, the eldeſt only ſhall inherit—but the females altogether *ib.*
5 The lineal deſcendants *in infinitum* of any perſon deceaſed, ſhall repreſent their anceſtors *ib.*
6. The male iſſue ſhall be admitted before the female *Page* 12
7. On failure of lineal deſcendants, or iſſue of the perſon laſt ſeiſed, the inheritance ſhall deſcend to the blood of the firſt purchaſer 13
8. The collateral heir of the perſon laſt ſeiſed, muſt be his next collateral kinſman of the whole blood 14
9. In collateral inheritances, the male heirs ſhall be preferred to the female 15
10. Deſcents by cuſtom are of ſeveral kinds, as in *Gavelkind*, *Borough*, *Engliſh*, &c. 17
11. Deſcents by ſtatute are thoſe which take place in fees-tail *per formam doni* 18

DISTRESS.

1. A diſtreſs is the taking of a perſonal chattel out of the poſſeſſion of the wrong doer, into the cuſtody of the party injured, to procure a ſatisfaction for the injury 76
2. The ſeveral injuries for which a diſtreſs may be made, enumerated; the moſt common of which is non-payment of rent 76
3. By 4 *Geo.* 2. *c.* 28. a diſtreſs may now be made for any kind of rent in arrear *ib.*
4. A diſtreſs at common law, is in the nature of *a pledge* *ib.*
5. By 32 *Hen.* 8. *c.* 37. executors or adminiſtrators may diſtrain for rent due in the life-time of the teſtator or inteſtate 77
6. By 37 *Hen.* 8. *c.* 37. a huſband who is leſſor or landlord in right of his wife, or the perſonal repreſentative of ſuch huſband, may diſtrain after the death of his wife *ib.*
7. By 17 *Car.* 2. *c.* 7. landlords may diſtrain *cattle* twice for one rent *ib.*
8. By 8 *Ann.* *c.* 14. landlords or leſſors may diſtrain at any time within ſix months after the determination of the term *ib.*

9. By

9. By 4 *Geo.* 2. *c.* 28. a *meſne landlord* may diſtrain under a new chief leaſe, although the under-leaſes were not ſurrendered *Page* 78
10. By 11 *Geo.* 2. *c.* 19. landlords may *diſtrain* and *ſell* goods fraudulently carried off the premiſſes *ib.*
11. But a landlord cannot ſeize goods ſo removed, if ſold to perſons not *privy* to the fraud *ib.*
12. If goods fraudulently removed, be *bona fide* ſold, the landlord ſhall recover *double* their value in an *action of debt* 79
13. Or, if the goods do not exceed the value of 50*l.* he may apply to a juſtice in *a ſummary way* *ib.*
14. By 11 *Geo.* 2. *c.* 19. a landlord having a right to diſtrain, may break open houſes, &c. to ſeize goods *fraudulently* ſecured therein *ib.*
15. When the demiſe is not by *deed*, landlords may recover a reaſonable ſatisfaction for *uſe and occupation* 80
16. The lord of a manor may diſtrain for rent, ſervices, amerciaments, &c. *ib.*
17. A commoner may diſtrain cattle *damage feaſant* *ib.*
18. The perſons to whoſe uſe any man is enfeoffed of land, may diſtrain *ib.*
19. In what caſes a diſtreſs may be made for *damage feaſant* 81
20. The aſſignee of a rent, for *partition* or *dower*, may diſtrain *ib.*
21. A donor or leſſor, ſaving the *reverſion* and reſerving rent, may diſtrain of common right; but if he part with the reverſion, a right to diſtrain muſt be reſerved *ib.*
22. The *aſſignor* of a term cannot diſtrain *ib.*
23. The ſheriff may diſtrain at any houſe within his county *ib.*
24. A *bailiff* after tender cannot diſtrain *ib.*
25. A mortgagee, after notice to the tenant under a leaſe, prior to the mortgage, may diſtrain *Page* 81
26. A perſon cannot diſtrain for a *fee farm rent*, unleſs the caſe is brought within the ſtatute 4 *Geo* 2. *c.* 28. *ib.*
27. Bodies politic and corporate, may diſtrain for rent arrear 82
28. A huſband ſeiſed of lands in right of his wife, cannot diſtrain where *the reverſion* goes to *the heir* *ib.*
29. Diſtreſs may be made on a rent payable by *cuſtom* on the day the tenant enters *ib.*
30. Of what things a diſtreſs may be made 83
31. Things *feræ naturæ*, cannot be diſtrained 83
32. Fixtures which go to *the heir*, cannot be diſtrained *ib.*
33. By 2 *Will.* 3. *c.* 5. corn or hay *cut* may be diſtrained for rent *ib.*
34. By 11 *Geo.* 2. *c.* 19. cattle on common may be diſtrained *ib.*
35. By 11 *Geo.* 2. *c.* 19. corn or other grain *growing*, may be diſtrained and taken when ripe, and lodged in the barn on the premiſſes; or if no barn, may be removed *ib.*
36. But notice muſt be given, and on tender of rent and coſts, the diſtreſs ſhall be reſtored 84
37. Landlords may diſtrain for double rent after a holding over *ib.*
38. What goods *cannot be diſtrained* *ib.*
39. A landlord may in general diſtrain whatever he finds on the premiſſes, though not the property of the tenant *ib.*
40. But if they are the property of *third perſons*, and are on the premiſſes of the tenant in *the way of trade*, they cannot be diſtrained 85
41. A *gentleman's chariot*, ſtanding at a livery ſtable, may be diſtrained

for rent due to the landlord of the ſtables *Page* 85
42. A *race horſe* ſtanding at a ſtable half a mile from an *inn*, may be diſtrained for rent due to the landlord of the inn *ib.*
43. Things diſtrained *damage feaſant*, cannot while thus diſtrained, be taken for *rent* *ib.*
44. Horſes and cart, where and in what caſes, diſtrainable *ib.*
45. Money out of a bag cannot be diſtrained; for it has no ear-mark *ib.*
46. Of things diſtrainable for *damage feaſant*, for tolls and for port duties 86
47. Of making a ſecond diſtreſs *ib.*
48 *Wearing apparel* may be diſtrained for rent 87
49. *Way-going crops* may be diſtrained within the ſix months *ib.*
50. At what *time* a diſtreſs ſhall be taken *ib.*
51. In what *place* a diſtreſs may be made 88
52. A diſtreſs by the common law, being only in the nature of *a pledge*, cannot be *ſold*, but muſt be impounded 89
53. The ſeveral kinds of *pounds*, and the method of impounding, deſcribed 90
54. In what manner a diſtreſs may be uſed *ib.*
55. But by the 2 *Will. & Mary*, *c.* 5. goods diſtrained for *rent*, if the tenant ſhall not, within *five days* after the diſtreſs, and *notice* given him thereof, replevy the ſame; the perſon may, at the expiration of the *five days*, ſell the goods diſtrained 91
56. But they muſt be firſt *appraiſed* as the act directs *ib.*
57. What ſhall be conſidered ſufficient notice for this purpoſe *ib.*
58. By 11 *Geo.* 2. *c.* 19. diſtreſſes for rent may be *ſecured* and *ſold* on the premiſes
59. Determinations on theſe ſtatutes *Page* 92
60. Of an *irregular* and *exceſſive* diſtreſs; in what caſes the diſtrainer ſhall be a *treſpaſſer*; and of the amends to be made 93, 94
61. The remedy for an *exceſſive* diſtreſs 95
62. Of *reſcuing* a diſtreſs *ib.*
63. *A reſcue* is where a man ſets goods at large lawfully *diſtrained* *ib.*
64. If a diſtreſs be taken contrary to law, it may be reſcued *ib.*
65. What ſhall be deemed a reſcue *ib.*
66. By 2 *Will. & Mary*, *c.* 5. on a *pound breach*, or reſcue of goods diſtrained for rent, the party grieved ſhall recover treble damages *ib.*
67. The party may maintain an action on the caſe on this ſtatute, though no notice be given of the diſtreſs *ib.*
68. If diſtreſs be made after tender, the goods may be reſcued *ib.*
69. By 11 *Geo.* 2. *c.* 19. if any tenant ſhall be in arrear *one year's rent*, and ſhall deſert the premiſſes, leaving no ſufficient diſtreſs to countervail the arrears of rent; two diſintereſted juſtices of the county may view the premiſſes, and affix fourteen days notice thereon, that they will, at the expiration thereof, make a ſecond view; and if the tenant ſhall not then appear and pay, they ſhall put the landlord in poſſeſſion, and the leaſe ſhall be void; but the tenant may *appeal* to *the ſeſſions* 96
70. Precedents and directions for making *a diſtreſs*, with the forms of letter of attorney, warrant to diſtrain, words to be uſed in diſtraining, inventory, notice, delivery of copy of the inventory, &c. &c. &c. 97 to 103

DOWER.

1. The eſtate in dower 5

DOUBLE RENT—*Rent.*

1. By 4 *Geo.* 2. *c.* 18. if the tenant after notice from his landlord to quit, hold over, he ſhall pay double rent *Page* 74
2. By 11 *Geo.* 2. *c.* 19. *ſ.* 18. if tenant gives notice to quit, and holds over, he is liable to double rent *ib.*
3. The notice neceſſary to give under theſe ſtatutes 71, 74, 75

EJECTMENT.

1. An ejectment is a mixed action to recover a term and damages 135
2. The *ancient method* of proceeding in this action, and the ſeveral caſes in which it muſt ſtill be purſued 135, 136
3. The *modern method* of proceeding in ejectment 136, 137
4. In what caſes ejectment will lie, and what deſcription of perſons may bring this action 139 to 147
5. Of what things an ejectment will lie; and therein of the manner in which they muſt be deſcribed in the declaration 147
6. *Ejectment* for non-payment of *rent* 149
7. How a landlord may proceed where there is half a year's rent in arrear, and he has a right to *re-enter* 150
8. How a tenant may ſave his leaſe on payment of arrears, &c. 151
9. Conſtructions on the ſtatute of 4 *Geo.* 2. *c.* 28. 152
10. Of the notice to quit, which is neceſſary to be given to ſupport an ejectment under this ſtatute 153
11. Of the declaration in ejectment, and herein of the *demiſe*, *entry*, and *ouſter* *ib.*
12. The form in which the declaration muſt ſtate the requiſites to this action 154
13. The manner in which the leaſe, entry, and ouſter, muſt be alledged 155
14. Of the ſervice of the declaration and its incidents *Page* 156
15. By 4 *Geo.* 2. *c.* 28. the ſervice of the declaration muſt be *perſonal*, if poſſible *ib.*
16. The circumſtances under which perſonal ſervice will be diſpenſed with 157
17. Of moving for and obtaining judgment againſt the caſual ejector *ib.*
18. Of the defence and plea to this action 159
19. The evidence which is neceſſary to ſupport ejectment, and to prove the defendant's pleas 161
20. What ſhall be conſidered good proof of marriage 162
21. Whether an outſtanding term can be ſet up 163
22. Of the verdict in ejectment 164
23. Of the judgment in ejectment *ib.*
24. In what caſe the party ſhall have coſts 165
25. Of the writ of execution 166
26. By 16 & 17 *Car.* 2. *c.* 8. no execution in ejectment ſhall be ſtayed by *writ of error*, unleſs the plaintiff in error become bound for the *coſts* 168
27. In what caſes the plaintiff, after recovery in ejectment, may bring action for the *meſne profits* 169
28. Of bringing a *ſecond ejectment* 171
29. Precedents in ejectment 172 to 184

ESTATES.

1. *An eſtate* in lands, tenements, and hereditaments, ſignifies ſuch *intereſt* as the tenant hath therein; and are divided into ſuch as are *freehold*, and ſuch as are *leſs than freehold* 3 to 8
2. A freehold eſtate is the *poſſeſſion* of the ſoil by a *freeman*, and at common law, could only be created by *livery of ſeiſin* 3

3. Eſtates of freehold are alſo divided into eſtates of *inheritance*, and eſtates *not of inheritance* *Page* 4
4. Freehold eſtates of inheritance, are either inheritance *abſolute*, as in *fee-ſimple*, or *limited*, one ſpecies whereof is the eſtate in *fee-tail* *ib.*
5. A tenant in fee-ſimple is he that hath lands, tenements, or hereditaments, to *hold* to him and his heirs *for ever* 3
6. To conſtitute this eſtate, the word "*heir*" is neceſſary in the grant or donation, except in deviſes by *will*, or in grants to the crown, or other corporation *ib.*
7. A fee qualified, is ſuch an eſtate as has a qualification ſubjoined to it *ib.*
8. A fee conditional, is a fee reſtrained to ſome particular heir, excluſive of others *ib*
9. *An eſtate in tail*, is created by force of the ſtatute *de donis*, and is either *general* or *ſpecial*, in *tail male* or in *tail female* 4
10. An eſtate of *freehold not of inheritance*, is an eſtate *for life* only, ſome of which are *conventional*, or expreſsly created by the act of the parties; others merely *legal*, as created by conſtruction or operation of law *ib.*
11. An eſtate after poſſibility of iſſue extinct, is an eſtate for life, created by operation of law, in the manner deſcribed *ib.*
12. An eſtate by the curteſey of *England*, is an eſtate for life, created by operation of law, as deſcribed 5
13. An eſtate for life, created by the parties, may be for a perſon's *own life*, or for the life of *another*, as deſcribed 6
14. An eſtate in *dower*, is an eſtate for life created by operation of law 5
15. An eſtate of jointure, is conſtituted, and given, in the manner deſcribed, *in lieu* of dower 6
16. *Eſtates, leſs than freehold*, are, 1. Eſtates for years; 2. Eſtates at will; 3. Eſtates by ſufferance *Page* 7, 8
17. An eſtate for years, is a covenant for the poſſeſſion of lands or tenements, for ſome determinable period 6
18. An eſtate at will, is where lands and tenements are let by one man to another, to have and to hold at the will of the leſſor 7
19. An eſtate at ſufferance, is where one comes into poſſeſſion of land by lawful title, but keeps it afterwards without any title at all 8
20. A copyhold eſtate, is an eſtate at will, held in fee-ſimple, fee-tail, or for term of life *ib.*
21. *Eſtates upon condition*, are either upon condition *implied* or condition *expreſſed*: The firſt kind is where a grant of an eſtate has a condition annexed to it inſeparably from its eſſence and conſtitution, although no condition be expreſſed in words: The ſecond kind are mortgages, elegits, ſtatute merchant and ſtatute ſtaple 8 to 10
22. An eſtate by *mortgage*, is where land is procured for money borrowed, &c. 10
23. An eſtate by *elegit*, is where a creditor is put into poſſeſſion by the ſheriff on a writ of execution, called an *elegit* *ib.*
24. An eſtate by *ſtatute merchant*, is created by virtue of a bond entered into purſuant to the ſtatute *de mercatoribus* *ib.*
25. An eſtate by *ſtatute ſtaple*, is obtained by execution on a record acknowledged purſuant to the ſtatute of ſtaple 11
26. Eſtates alſo may be conſidered ſolely with regard to their duration, and are, in this reſpect, either in *poſſeſſion*, in *remainder*, or in *reverſion* *ib.*

27. Eſtates

27. Eſtates are alſo conſidered with reſpect to the number and connection of their owners, and are, in this reſpect, either eſtates in *ſeverality*, in *joint-tenancy*, in *coparcenary* *Page* 8, 9

ESTOVERS.

1. *Eſtovers*, is a liberty of taking neceſſary wood for the uſe or furniture of a houſe or farm from off another's eſtate 60
2. Eſtates are of three kinds in law, *viz. houſe-boot*, *plough-boot*, and *hedge-boot*, and are incident to the eſtate of every tenant, whether for life or years *ib.*
3. If a tenant cut down trees unneceſſarily, or ſuffer them to fall, or if they are wind-falls, the landlord ſhall have them *ib.*
4. But the tenant ſhall have *dotards* or *pollards* *ib.*
5. The leſſor may have an action againſt the leſſee for ſuffering a *ſtranger* to cut down or to diſbark trees growing on the demiſed premiſes 61
6. If part of the land deſcend to the tenant, he ſhall take *all* the eſtovers out of the remainder *ib.*
7. *Gleaning* cornfields is not lawful 61
8. The lord of a manor cannot take eſtovers in the *waſtes* of the manor *ib.*

FEE.

1. Fee-ſimple, the nature and property of this ſpecies of eſtate deſcribed 3
2. Fee-qualified *ib.*
3. Fee-conditional *ib.*
4. Fee-tail 4

FEUDAL TENURES.

1. Introduction of them by *William* the Conqueror 1
2. The diſtinction between *feudal* and *allodial* property 2

GLEANING.

1. The practice of *gleaning*, when claimed as a *right* by the poor, is unlawful *Page* 61

GRANTS—*Leaſes.*

HEIR—*Diſcent.*

HOUSES.

1. An agreement for letting an *apartment* 31
2. An agreement for letting *a houſe* 32, 33
3. An agreement to grant a leaſe of a houſe 39
4. An agreement for building a houſe 36
5. A leaſe of a houſe 37

INVENTORY—*Diſtreſs.*

JOINTURE.

1. This ſpecies of eſtates deſcribed 5

JOINTENANTS—*Eſtates.*

LANDLORD and TENANT.

1. The definition of theſe terms, and the ſeveral kinds of *landlords* and *tenants* deſcribed 1

See 5 T. Rep.ᵗ — — 373

LEASES.

1. *A leaſe* is a ſpecies of conveyance, uſually made in conſideration of *rent*, or other annual recompence 19
2. A leaſe muſt always be for a leſs time than the leſſor hath in the premiſes *ib.*
3. For if a leſſor grant or demiſe his *whole intereſt*, it is an *aſſignment*, and not a *leaſe*; but a court of equity will eſtabliſh it during the term 19, 23

4. What perſons are empowered by law to grant leaſes, and under what circumſtances *Page* 19
5. Church leaſes, and the form and circumſtances under which colleges, cathedrals, biſhops, parſons, vicars, and other eccleſiaſtical or eleemotynary perſons, any corporation, whether ſole or aggregate, may grant leaſes 20
6. In what caſes *infants*, *executors*, or *adminiſtrators*, may grant leaſes 21
7. A leaſe made during mutual pleaſure, is, after entry, a leaſe for a year, and ſo on from year to year 21
8. A leaſe may be avoided by the *entry* of the leſſor, and the *latches* of the leſſee *ib.*
9. A leſſor for years may bring *debt* for rent againſt the perſonal repreſentative of his leſſee, after aſſignment of the leaſe 22
10. If a leſſor aſſign the rent reſerved, the aſſignee may *diſtrain* or bring debt for the arrears *ib.*
11. A leaſe, or grant of *land*, paſſes every thing terreſtrial *thereon*, or *above* or *below* the ſurface, from the heavens to the center of the earth, (*Sed. Vide*, *page* 28, *ſect.* 65.) *ib.*
12. A leſſee may avail himſelf of the acts of the leſſor to determine the leaſe *ib.*
13. *A leaſe*, reſerving a *pepper-corn*, ſhall operate as a *bargain and ſale* *ib.*
14. A leaſe for years, "ſo long as *both* parties ſhall live," determines on the death of either 22, 24
15. A leaſe ſealed and delived by the leſſor only, is good 22
16. Leaſes made good without attornment of the tenants 22 note (*a*)
17. The law gives the leſſee an implied right to every thing that is neceſſary to his full enjoyment of the leaſe, (*and ſee page* 29. ſect. 69.) 22, 23
18. A leſſee cannot enter the premiſes during the leaſe, except to receive rent, to ſee that no waſte be done, or under a covenant for that purpoſe *Page* 23, 25
19. A leaſe made without conſideration, is void 23
20. A leaſe of "a houſe with the appurtenances," will paſs the orchard, garden, yards, ſhops, &c. belonging to it 23, 24
21. If a leſſee accept rent from an aſſignee of the leaſe, he cannot reſort back to the original leſſee 23
22. In a leaſe with an exception, the things excepted are not demiſed *ib.*
23. A leſſee may remove fixtures during the continuance of the leaſe; but cannot deface thoſe parts of the premiſſes which he has embelliſhed 23, 24
24. From what *time* leaſes ſhall *commence*, according to the manner of their commencement being expounded 24, 25
25. A leaſe does not authoriſe the leſſee to bring treſpaſs till he has taken poſſeſſion. 24
26. A leaſe may be pleaded, as loſt by time or accident 25
27. A leaſe, tho' good againſt the leſſor, yet if made fraudulently, is void againſt purchaſers and creditors *ib.*
28. A leaſe made by *dureſs*, is voidable *ib.*
29. In what caſes leſſees are intitled to *emblements* 6, 7, 25, 26
30. The aſſignee of a leaſe, aſſigned after breach, is not liable on the covenant 26
31. Of *covenants* in leaſes 26, 27, 29
32. An *under-leaſe* is not an *aſſignment*; but what cannot be ſupported as an aſſignment, ſhall be good as an under leaſe 27
33. A leaſe from the day of the date is good under a power to demiſe in *poſſeſſion* only *ib.*

34. Of *leaſes* under powers *Page* 27, 28, 29, 31
35. A leaſe from 1 *June*, for 3 years, begins on the 2d. and ends on the 1ſt. 28
36. A leaſe by tenant for life, is void on his death, though the reverſioner, an infant, be named therein *ib.*
37. On a leaſe renewable, on claim within one month before the expiration of the term, the claim muſt be made within the term *ib.*
38. In what caſe an *agreement* ſhall operate as a *ſurrender* of a leaſe *ib.*
39. What ſhall be conſidered *an agreement for a leaſe* 29, 30
40. A proviſo in a leaſe that the landlord ſhall re-enter on the tenant committing an act of bankruptcy, is good 29
41. A leſſee under covenant to pay all taxes, *impoſitions*, &c. is not liable after aſſignment to the expence of building a party wall—ſee alſo page 31. *ſ.* 81. 30, 31
42. A leaſe made in 1785, for 3, 6, or 9 years, is determinable in 1788, 1791, and 1794, on reaſonable notice to quit 31
43. A leaſe of tithes; the tithes not having been before demiſed, is *void*, under a power to let *ſo as* the *uſual* rents be reſerved *ib.*
44. Precedents of agreements for leaſes, forms of leaſes, deeds poll, aſſignments of leaſes, bills of ſale, *&c.* 31 to 60

LODGINGS—*Agreements.*

1. The nature of the tenure which a lodger has in the apartments hired 1
2. An agreement for letting an apartment 37
3. An agreement for letting a ready furniſhed lodging 36
4. Of the demand and payment of the rent of lodgings 68
5. Of the notice to quit which may be given in the caſe of lodgings *Page* 73
6. Of diſtraining for the rent 76
7. A landlord's remedy when there are no goods on the premiſſes 96

MEMORIALS.

1. Directions for executing memorials 58
2. Memorial of a leaſe for years 59
3. Memorial of a mortgage for years *ib.*

NOTICES.

1. Landlord's notice to the tenant to quit 74
2. Tenant's notice to the landlord *ib.*
3. Notice to found a demand of double rent 71
4. Notice to the ſheriff when in poſſeſſion on an execution 165
5. Notice of diſtreſs 91
6. Notice in ejectment 150, 153

OATH.

1. Of the oath to be adminiſtered by the conſtable to the appraiſer in the caſe of ſelling a diſtreſs 91

ORIGINAL.

1. Of the original writ in replevin 108
2. Of original in ejectment 136, 177

OUSTER—See *Ejectment.*

POLICY of INSURANCE.

1. Form of an aſſignment of policy of inſurance 49

POSSESSION.

1. Of poſſeſſion in *replevin* 109
2. Of poſſeſſion in *ejectment* 165

PRECEDENTS.

1. Of agreements for letting apartments, houſes, gardens, for building

ing and purchaſing houſes, and for letting ready furniſhed lodgings *Page* 31 to 36
2. Of leaſes, deeds poll, aſſignments, bills of ſale, attornments, memorials and bills of coſts, &c. 36 to 59
3. Of notices to quit premiſes 74, 75
4. For making diſtreſs 97 to 102
5. Of replevin bonds, aſſignment of it, declarations in replevin, avowries, pleas in bar, writs of inquiry, and other writs and bills of coſts 121 to 135
6. Precedents in *ejectment*, as affidavits of ſervice, judgments, notices, declarations, pleas, rules, &c. &c. 172, *ad finem*

PURCHASE.

1. *Purchaſe*, in a legal ſenſe, includes every mode of obtaining lands, &c. except that by *deſcent* 18
2. The ſeveral modes of purchaſe, known to the law of *England*, enumerated *ib.*

RENT.

1. *Rent* is a ſpecies of *incorporeal hereditament*, and ſignifies a compenſation for the poſſeſſion of ſome corporeal inheritance 61
2. What circumſtances are neceſſary to conſtitute a rent *ib.*
3. The ſeveral kinds of rent deſcribed 62
4. A rent muſt be reſerved to the perſon granting or demiſing the lands and tenements, or to him and his heirs *ib.*
5. In what manner rent may be reſerved, and by whom it is payable 63
6. If a leſſor aſſign a rent, and the leſſee attorn, the aſſignee may diſtrain for arrears *ib.*
7. Rent in arrear, at the death of the leſſor, ſhall go to his perſonal repreſentatives, and not to his heirs, (ſee alſo page 64, pl. 15.) *Page* 63
8. But if a leſſor die before the day of payment, his heir ſhall have the rent *ib.*
9. The perſonal repreſentatives of a leſſee, muſt pay *rent* before *bonds*, &c. *ib.*
10. A bond for performance of covenants, is forfeited by non-payment of rent *ib.*
11. A *general releaſe* of all *demands*, does not releaſe rent *due* upon a leaſe 64, 65
12. A leſſee who under-lets part of his term, may *diſtrain* or bring *debt* for arrears of the rent reſerved on the under-leaſe, (*Sed qu. vide* page 65. pl. 24.) 64
13. If a huſband poſſeſſed of a *term* in right of his wife, demiſes part, his executors ſhall have the rent during the continuance of the teſtator's demiſe *ib.*
14. A rent granted to two or more *tenants in common*, is *ſeveral* *ib.*
15. But if two or more *coparceners* make a leaſe, the rent reſerved is in *common* 64, 65
16. If part of lands demiſed be recovered from the leſſor, the rent ſhall be *apportioned* 64
17. The executors of a leſſee who has aſſigned his term, are not anſwerable for the rent *ib.*
18. If a huſband and wife demiſe lands, and the huſband die, and the wife marry again before the rent becomes due, the ſecond huſband ſhall have the rent 65
19. If a leſſor enter the premiſſes, the rent is *ſuſpended* while he holds the lands *ib.*
20. Tenants kept out of poſſeſſion by civil commotion, muſt ſtill pay their rent, (ſee alſo page 66. pl. 26.) *ib.*
21. A *leſſee* is liable to *debt* for rent, though he never enters; but he cannot

not be ſued on the covenants till he take poſſeſſion *Page* 65
22. If a tenant hold over after notice to quit *or* to pay ſuch a rent, the landlord may recover the rent in an action for *uſe and occupation* 66
23. By 8, *Ann. c.* 14. landlords are intitled to a year's arrear of rent, in preference to any other of the tenant's creditors *ib.*
24. The determinations which have taken place on this ſtatute *ib.*
25. By 11 *Geo.* 2. *c.* 19. the executors or adminiſtrators of tenants for life, may recover a proportion of the rent due at the time of their teſtator's or inteſtate's deceaſe *ib.*
26. *Rent* is regularly due and payable *on the land*, if no particular place is mentioned *ib.*
27. Rents due to the crown, muſt be paid at the exchequer, or to the king's receiver *ib.*
28. If rent be payable preciſely at a day, the *leſſee* muſt ſeek out the *leſſor* to pay it 67
29. The demand of rent muſt be made at the place where it is payable *ib.*
30. At what time rent becomes due *ib.*
31. Every quarter's rent is conſidered in law as a ſeveral debt *ib.*
32. The tenant has all the day until midnight to pay his rent; but he ſhould have it in readineſs before ſun-ſet 68
33. *A demand* of rent is neceſſary before a landlord can *re-enter* for non-payment, unleſs waived by agreement *ib.*
34. But by 4 *Geo.* 2. *c.* 28. where ſix months rent is in arrear, and no ſufficient diſtreſs, a demand is not neceſſary *ib.*
35. A demand is not neceſſary, where the remedy is by *diſtreſs*, and not by *re-entry* *ib.*
36. What entry ſhall be lawful *ib.*
37. The landlord muſt be careful not to demand more rent than is due *Page* 69
38. What ſhall be a good *tender* of rent *ib.*
39. What ſhall be conſidered as an *acceptance* of rent *ib.*
40. In what caſes acceptance of rent ſhall be conſtrued a waiver of a forfeiture 70
41. The ſeveral remedies given in law, to a landlord againſt his tenant, for non-payment of rent (Vide "*Diſtreſs*" and "*Debt*") 71
42. On all *demiſes* where no certain term is mentioned, there muſt be ſix months notice to quit (ſee *notice to quit*) 71, 72
43. By 4 *Geo.* 2. *c.* 28. if the tenant, after notice from his landlord to quit, hold over, he ſhall pay double rent 74
44. By 11 *Geo.* 2. *c.* 19. if the tenant give notice to quit, and afterward holds over, he thereby becomes liable to pay double rent *ib.*
45. A parol notice on a parol leaſe, is ſufficient; but it muſt be previous to the expiration of the leaſe *ib.*
46. *Precedents* reſpecting *rents*; as forms of notices to quit, demands of rents, *&c.* 75

REPLEVIN.

1. *Replevin* ſignifies the taking back *the pledge* taken on a *diſtreſs*, and counts in a re-delivery of the goods diſtrained to the firſt poſſeſſor, on his giving ſecurity to the ſheriff to try the right 103
2. The plaintiff in replevin muſt have a property in the goods at the time of the taking *ib.*
3. An executor, and a huſband alone, or jointly with his wife, may bring replevin *ib.*

4. Perſons poſſeſſed of goods in ſeveral or diſtinct rights, cannot join in a replevin *Page* 103
5. *Replevin* lies for every ſpecies of chattel perſonal, which is capable of legal ownerſhip 104
6. It lies for every thing that may be, by law, diſtrained; as for things wild by nature, if made tame or reclaimed; but not for animals which are only kept for pleaſure, curioſity or whim *ib.*
7. It will not lie for things fixed to the freehold, nor for deeds and charters concerning the realty, nor for goods taken in execution, &c. *ib.*
8. But where *replevin* will not lie, *detinue* will *ib.*
9. *Replevin* is of two kinds, *viz.* by *writ* and by *plaint* *ib.*
10. The method of granting replevin 105
11. Out of what courts replevin iſſues *ib.*
12. The *writ* iſſues out of chancery, returnable into the ſuperior or county courts *ib.*
13. The *plaint* is obtained by application to the ſheriff or his *deputies*, and may be made either by *parol* or *precept* *ib.*
14. The ſheriff may hold plea in replevin, though above 40*s.* except *the freehold* come in queſtion, or *ancient demeſne* be pleaded, or the writ *de proprietate probanda* be obtained *ib*
15. The ſuit may be removed by *pone* or *re. fa. lo.* 106
16. From what courts replevin cannot iſſue *ib.*
17. Of *the pledges* in replevin, in what manner to be taken, what perſons may become pledges, and of the conſequences of not taking them 107
18. By 11 *Geo.* 2. *c.* 19. In every replevin of a *diſtreſs for rent*, the ſheriff, or his officers, ſhall take, in their own names, from the plaintiff and two ſecurities, *a replevin bond*, in double the value of the goods, &c. which he ſhall aſſign to the *avowant*, if the condition be not performed *Page* 107
19. If the ſheriff neglect to take the bond, the party injured ſhall have an action againſt him 108
20. The *original writ* in replevin is in the nature of a *juſtices*, to empower the ſheriff to hold plea in his county court *ib.*
21. The writ *de proprietate probanda*, iſſues when the defendant claims property in the goods diſtrained *ib.*
22. The *capias in withernam*, iſſues upon an *elongata* returned, to intitle the party replying to take a ſecond or reciprocal diſtreſs 109
23. The writ *de returno habendo*, is a *judicial* writ, and intitles the party to have the goods returned *ib.*
24. The writ of *ſecond deliverance*, is a judicial writ, depending upon the firſt original, and is given by the 13 *Edw.* 1. *c.* 2. which, on the party replevying, making a ſecond default, or where a diſtreſs, twice replevied is returned, *ordains* that the diſtreſſes taken by this writ ſhall be *irreplevisiabia* *ib.*
25. The writ of *pone* is uſed, when the proceedings are by *writ* of replevin to remove them into the ſuperior court 110
26. The writ of *recordari*, is uſed for the ſame purpoſe when the proceedings are by *plaint* *ib.*
27. The writ of *recaption* lies where the defendant diſtrains again, or the plaintiff for the ſame rent 111, 112
28. The writ of *enquiry*, iſſues to enquire of the damages when judgment is given for the plaintiff or demurrer, or by default 111
29. Of the *declaration* in replevin, and the manner in which it muſt be framed 112
30. Of

30. Of the ſeveral pleas in replevin, *viz.* in abatement, bar, juſtification, avowry, conuſance *Page* 113, 114, 115
31. Of the general iſſue 116
32. What matters the plaintiff may plead in bar *ib.*
33. By 21 *Hen.* 8. *c.* 19. every *avowant*, &c. ſhall recover damages and coſts
34. By 17 *Car.* 2. *c.* 7. if the plaintiff in replevin be non-ſuited before iſſue joined, the defendant, on a ſuggeſtion in the nature of *avowry* or *cognizance*, ſhall have a writ of enquiry 117
35. Of proceedings under, and determination on this ſtatute 118
36. By ſtatute *Glouceſter*, a plaintiff in replevin ſhall recover coſts *ib.*
37. By 7 *Hen.* 8. *c.* 4. every *avowant*, &c. in replevin for rent, &c. ſhall recover damages and coſts 119
38. By 21 *Hen.* 8. *c.* 19. every *avowant*, &c. ſhall recover coſts *ib.*
39. By 17 *Car.* 2. *c.* 7. the ſheriff is empowered in executing a writ of enquiry to give the avowant his coſts *ib.*
40. By 11 *Geo.* 2. *c.* 19. the defendant in replevin for rent, ſhall recover double coſts of ſuit *ib.*
41. Determination on theſe ſtatutes 119, 120
42. *Precedents* in replevin 121 to 127
43. Bills of coſts for *plaintiff* and *defendant* in replevin 128 to 135

RESCOUS.

1. In what caſes a diſtreſs may be lawfully reſcued 95

SERVICE.

1. Service of declaration in ejectment 177

STATUTES.

6 Edw. 1. c. 2. (forfeiture) 5
13 Edw. 1. (ſt. merchant) 10, 109
9 Edw. 2. c. 9. *Page* 88
13 Edw. 3. c. 34. (dower) 5
27 Edw. 3. c. 9. (ſtatute ſtaple) 18
51 Hen. 3. c. 4. 85
52 Hen. 3. c. 2. 88
52 Hen. 3. c. 21. 104
7 Hen. 8. c. 4. 118
27 Hen. 8. c. 10. (uſes) 5
21 Hen. 8. c. 19. 117
32 Hen. 8. c. 28. 20, 27, 139
32 Hen. 8. c. 34. 30
37 Hen. 8. c. 37. 71, 77, 114
5 & 6 Edw. 6. c. 11. (dower) 5
1 & 2 Phil. & Mary, c. 12. 89, 105
13 Eliz. c. 7. 55
27 Eliz. c. 4. 25
17 Car. 2. c. 7. 77, 86, 117, 119
29 Car. 2. c. 3. (frauds) 7, 21
2 Will. 3. c. 5. 83, 90, 93, 95
8 & 9 Will. 3. c. 3. (coparceners) 8
4 & 5 Ann. c. 3. (warranty) 6, 22
7 Ann. c. 18. (coparceners) 8
8 Ann. c. 14. (landlord 66, 71
4 Geo. 2. c. 28. (will) 8, 62, 74
7 Geo. 2. c. 20. (mortgage) 10, 142
11 Geo. 2. c. 19. (rents) 6, 66, 71
5 Geo. 3. c. 17. (tithes) 19
9 Geo 3. c. 16. (limitation) 141
14 Geo. 3. c. 48. 30
17 Geo. 3. c. 26. (regiſtering deeds) 58 notes
23 Geo. 3. c. 58. (ſtamps) 29, 31, 37

SUFFERANCE.

1. The definition of an eſtate at ſufferance 8

TENANT.

1. The ſignification of the word 1
2. The ſeveral ſpecies 6, 8

VERDICT.

1. Of verdict in replevin 114
2. Of verdict in ejectment 161

VERGE.

1. What perſons ſhall be conſidered tenants by the verge 8

FINIS.


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